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Attorneys for Defendant  
United States of America

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 VENUS ANGELIQUE HISAW, ) Case No. 08cv1214-WQH (RBB)  
12 Plaintiff, )  
13 v. )  
14 )  
15 UNITED STATES; and DOES 1-100, inclusive, )  
16 Defendants. )  
17 )  
18 )  
NOTICE OF MOTION AND MOTION  
TO DISMISS COMPLAINT OR, IN  
THE ALTERNATIVE, FOR SUMMARY  
JUDGMENT  
DATE: October 14, 2008  
TIME: 11:00 a.m.  
CTRM: 4  
[NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT]  
Hon. William Q. Hayes

**TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

20 PLEASE TAKE NOTICE that on October 14, 2008 at 11:00 a.m., or as soon thereafter  
21 as counsel may be heard, in the Courtroom of the Honorable William Q. Hayes, Defendant  
22 United States of America, through its attorneys of record, Karen P. Hewitt, United States  
23 Attorney, and Ernest Cordero, Jr., Assistant U.S. Attorney, will, and now does, bring its Motion  
24 to Dismiss Complaint or, in the Alternative, for Summary Judgment pursuant to Rules 12(b)(1),  
25 (6) and 56 of the Federal Rules of Civil Procedure. There will be no oral argument unless  
26 requested by the Court.

27 | III

28 | III

1        This motion is based upon this Notice of Motion and Motion, the accompanying  
2 Memorandum of Points and Authorities, the Declaration of Donna L. Reynolds and the files  
3 and records of this case.

4                      DATED: August 28, 2008

KAREN P. HEWITT  
United States Attorney

6                      /s Ernest Cordero, Jr.

7                      ERNEST CORDERO, JR.  
8 Assistant U.S. Attorney

9                      Attorneys for Defendant  
10                      United States of America

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VENUS ANGELIQUE HISAW, ) Case No. 08cv1214 JM (BLM)  
Plaintiff, )  
v. )  
UNITED STATES; and DOES 1-100, inclusive,) CERTIFICATE OF SERVICE  
Defendants. )

## **CERTIFICATE OF SERVICE**

**IT IS HEREBY CERTIFIED THAT:**

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893. I am not a party to the above-entitled action. I have caused service of:

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT AND DECLARATION OF DONNA L. REYNOLDS IN SUPPORT OF MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT.

on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Michael F. Avila, Esq.  
Daniel A. De Soto  
Avila & Peros, LLP  
2101 Rosecrans Avenue, Suite 5260  
El Segundo, CA 90245  
mfa@a-plaw.com  
jpk@a-plaw.com  
representing Plaintiffs

Charles Viviano, Esq.  
The Viviano Law Firm  
3333 Camino Del Rio South, Suite 220  
San Diego, CA 92108  
[trials@vivianolaw.org](mailto:trials@vivianolaw.org)  
representing County of Imperial and Imperial County Sheriff's Department

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

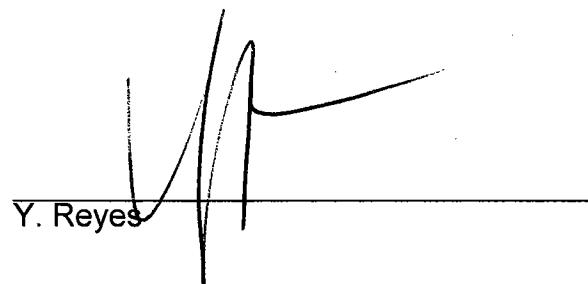
Shannon Duane Eifert, in Pro Per  
W6783 Center Valley Road  
Shiocton, Wisconsin 54170

1 the last known addresses, at which place there is delivery service of mail from the United  
2 States Postal Service.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on August 28, 2008.

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7 Y. Reyes  
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A handwritten signature of "Y. Reyes" is written in black ink. It features a stylized 'Y' followed by 'Reyes'. The signature is placed on a horizontal line, with several vertical tick marks extending upwards from the line to the left of the signature.

1 KAREN P. HEWITT  
2 United States Attorney  
3 ERNEST CORDERO, JR.  
4 Assistant U.S. Attorney  
5 State of California Bar No. 131865  
Office of the U.S. Attorney  
880 Front Street, Room 6293  
San Diego, CA 92101-8893  
Telephone: (619) 557-7473  
Email: ernest.cordero@usdoj.gov

**Attorneys for Defendant  
United States of America**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

## VENUS ANGELIQUE HISAW.

Case No. 08cv1214-WQH (RBB)

12 Plaintiff.

**DECLARATION OF DONNA L.  
REYNOLDS IN SUPPORT OF  
MOTION TO DISMISS COMPLAINT  
OR, IN THE ALTERNATIVE, FOR  
SUMMARY JUDGMENT**

UNITED STATES; and DOES 100, inclusive,

DATE: October 14, 2008

15 || Respondents

TIME: 11:00 a.m.

CTRM: 4

Hon. William Q. Hayes

I, Donna L. Reynolds, declare as follows:

I am a paralegal employed by the Department of the Interior. Since October 19, 2003, I have worked in the Office of the Regional Solicitor, Pacific Southwest Region, located at 2800 Cottage Way, E-1712, Sacramento, California 95825. The office has responsibility for receiving administrative claims in excess of \$2,500.00 from client agencies including the Bureau of Land Management (BLM) and adjudicating those claims for the Department of the Interior. As a paralegal in the Regional Solicitor's Office, I am responsible for logging in all administrative claims received by this office. I also maintain the office files for all administrative claims and monitor the claims through the adjudication process. As part of my duties, I also prepare and send correspondence to claimants and attorneys regarding the disposition of claims.

1 I have personal knowledge of all facts contained in this declaration. If called upon to  
2 do so, I could and would competently testify thereto.

3 1. On or about January 19, 2007, Plaintiff Venus Angelique Hisaw filed an  
4 administrative claim with BLM alleging negligence with respect to BLM's staffing, maintenance  
5 and supervision of the Imperial Sand Dunes Recreation Area ("ISDRA") on December 25,  
6 2005, the date of a fatal accident involving Kyle Przysiecki. (A true and correct copy of the  
7 administrative claim (hereinafter, "first administrative claim") is attached as Exhibit 1 to this  
8 declaration.) As part of my duties, I personally was responsible for logging in the claim at the  
9 Regional Solicitor's Office. Plaintiff filed the claim in her own name. Nowhere in the claim is  
10 there any reference to an attorney representing Plaintiff.

11 2. In her first administrative claim, Plaintiff listed her address as 16302 Rhone  
12 Lane, Huntington Beach, CA 92647. On February 2, 2007, BLM sent Plaintiff a letter denying  
13 the claim via certified mail. (A true and correct copy of the denial letter is attached as Exhibit  
14 2 to this declaration.) The letter was sent to the same address listed in Plaintiff's first  
15 administrative claim.

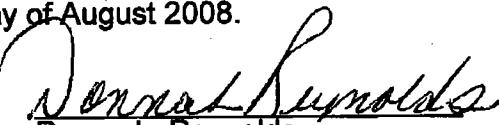
16 3. On or about February 26, 2007, the Postal Service returned the denial letter to  
17 BLM with an explanation that the letter had been unclaimed. The documentation from the  
18 Postal Service appears to indicate that notice of the letter was left at Plaintiff's residence on  
19 February 5 and February 15, 2007 before the letter was returned to BLM on February 26,  
20 2007. I personally was responsible for placing the returned denial letter in the office files. (A  
21 true and correct copy of the documentation received from the Postal Service indicating that  
22 the letter was unclaimed is attached as page 3 to Exhibit 2 of this declaration.)

23 4. Although Plaintiff was not represented by an attorney when she filed her first  
24 administrative claim, I sent a copy of the denial letter to Michael Avila of the Avila & Peros firm  
25 because he was the attorney representing the Estate of Kyle Przysiecki and might be in  
26 contact with Plaintiff. (Attached as Exhibit 3 is the office copy of the denial letter I sent to Mr.  
27 Avila on March 2, 2007 with my handwritten notation indicating that it was sent to him.) To my  
28 knowledge, BLM did not receive any communications from Mr. Avila in response to the letter.

1 The office file with respect to this administrative claim does not reflect any communications  
2 from Mr. Avila around the time I sent him a copy of the letter. Our office practice would be to  
3 file in the administrative claim all communications received from claimants and their attorneys.

4 5. On December 21, 2007, BLM received a second administrative claim from  
5 Plaintiff which was presented to BLM by Avila & Peros, LLP on Plaintiff's behalf. (A true and  
6 correct copy of the second administrative claim is attached as Exhibit 4.) BLM had not acted  
7 on the second administrative claim prior to July 1, 2008.

8 I declare under penalty of perjury under the laws of the United States that the foregoing  
9 is true and correct. Executed on this 27th day of August 2008.

10   
11 Donna L. Reynolds

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# EXHIBIT

## “1”

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008								
<p>1. Submit To Appropriate Federal Agency:</p> <p>United States Bureau of Land Management c/o United States Department of the Interior ATTN: Donna L. Reynolds, Office of the Solicitor 2800 Cottage Way, Rm. E-1712 Sacramento, CA 95825</p>		<p>2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code)</p> <p>Venus Angelique Hisaw - Claimant 16302 Rhone Lane Huntington Beach, CA 92647</p>										
<p>3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN</p>	<p>4. DATE OF BIRTH 12/20/1964</p>	<p>5. MARITAL STATUS single</p>	<p>6. DATE AND DAY OF ACCIDENT 12/25/2005</p>	<p>7. TIME (A.M. OR P.M.) 1:00 p.m.</p>								
<p>8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.)</p> <p>Claimant's 15 year-old son Kyle Przysiecki was riding a motorcycle in the Imperial Sand Dunes Recreational Area, in Glamis, California, which is federal land designated for recreational use by off-highway vehicles. Due to the United States Bureau of Land Management's failure to properly maintain the area to protect the safety of the public for whom the land is openly made available, an unsafe condition was created where other riders are not able to see each other until it is too late to avoid collisions. As a result of the dangerous condition, another off-road vehicle driven by Shannon Duane Eifert collided with the Claimant's son, causing serious chest and abdominal injuries to Claimant's son resulting in death. The United States Bureau of Land Management also failed to adequately staff and supervise the area resulting in a lack of timely and adequate medical care being available to save the life of the Claimant's son following the collision.</p>												
<p>9. <b>PROPERTY DAMAGE</b></p> <p>NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).</p> <p>No property damage is being claimed.</p>												
<p>BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side.)</p> <p>No property damage is being claimed.</p>												
<p>10. <b>PERSONAL INJURY/WRONFUL DEATH</b></p> <p>STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.</p> <p>The cause of Claimant's son Kyle Przysiecki's death is attributed to "chest and abdominal injuries" and "blunt force trauma" due to the collision.</p>												
<p>11. <b>WITNESSES</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px;">NAME</td> <td colspan="3" style="width: 70%; padding: 5px;">ADDRESS (Number, Street, City, State, and Zip Code)</td> </tr> <tr> <td style="padding: 5px;">Shannon Bargsten Matt Hove</td> <td colspan="3" style="padding: 5px;">802 S. Clemintine St., Anaheim, CA 92805 2210 S. Lewis St., Anaheim, CA 92805</td> </tr> </table>					NAME	ADDRESS (Number, Street, City, State, and Zip Code)			Shannon Bargsten Matt Hove	802 S. Clemintine St., Anaheim, CA 92805 2210 S. Lewis St., Anaheim, CA 92805		
NAME	ADDRESS (Number, Street, City, State, and Zip Code)											
Shannon Bargsten Matt Hove	802 S. Clemintine St., Anaheim, CA 92805 2210 S. Lewis St., Anaheim, CA 92805											
<p>12. (See instructions on reverse.) <b>AMOUNT OF CLAIM (in dollars)</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;">12a. PROPERTY DAMAGE  \$0.00</td> <td style="width: 25%; padding: 5px;">12b. PERSONAL INJURY  \$0.00</td> <td style="width: 25%; padding: 5px;">12c. WRONGFUL DEATH  \$25,000,000.00</td> <td style="width: 25%; padding: 5px;">12d. TOTAL (Failure to specify may cause forfeiture of your rights.)  \$25,000,000.00</td> </tr> </table>					12a. PROPERTY DAMAGE  \$0.00	12b. PERSONAL INJURY  \$0.00	12c. WRONGFUL DEATH  \$25,000,000.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights.)  \$25,000,000.00				
12a. PROPERTY DAMAGE  \$0.00	12b. PERSONAL INJURY  \$0.00	12c. WRONGFUL DEATH  \$25,000,000.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights.)  \$25,000,000.00									
<p>I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM</p>												
<p>13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)  <i>Venus Angelique Hisaw</i></p>		<p>13b. Phone number of person signing form (714) 873-0107</p>		<p>14. DATE OF SIGNATURE 1/16/07</p>								
<p>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</p>		<p>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</p>										
<p>The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)</p>		<p>Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)</p>										

**INSURANCE COVERAGE**

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance?  Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number.  No

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?  Yes  No

17. If deductible, state amount.

Not applicable.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts.)  
Not applicable.

19. Do you carry public liability and property damage insurance?  Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code).  No

**INSTRUCTIONS**

**Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.**

**Complete all items - Insert the word NONE where applicable.**

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

**Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.**

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

**PRIVACY ACT NOTICE**

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

**PAPERWORK REDUCTION ACT NOTICE**

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

SPECIAL CONDITIONS FATAL OFF-HIGHWAY				NUMBER INJURED 0	HIT & RUN FELONY	CITY UNINCORPORATED	JUDICIAL DISTRICT BRAWLEY	LOCAL REPORT NUMBER 05-12-53				
				NUMBER KILLED 1	HIT & RUN MISDEMEANOR	COUNTY IMPERIAL	REPORTING DISTRICT			BEAT 906		
LOCATION	COLLISION OCCURRED ON: IMPERIAL SAND DUNES RECREATION AREA						MO 12/25/2005	DAY 1300	YEAR TIME (2400)			
	MILEPOST INFORMATION:						DAY OF WEEK SUNDAY		TOW AWAY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
<input type="checkbox"/> AT INTERSECTION WITH: <input checked="" type="checkbox"/> OR: 2 MILE(S) SOUTH OF SR-78								STATE HWY REL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
PARTY 1	DRIVER'S LICENSE NUMBER NONE		STATE CA	CLASS U	AIR BAG P	SAFETY EQUIP. W	VEH. YEAR 2003	MAKE / MODEL / COLOR HONDA CRF 450 RED	LICENSE NUMBER X07V40	STATE CA		
DRIVER <input checked="" type="checkbox"/>	NAME(FIRST, MIDDLE, LAST) KYLE PRZYSIECKI											
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS 1723 BEVERLEY DR.											
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP ORANGE CA 92868											
BICY- CLIST <input type="checkbox"/>	SEX M	HAIR BRN	EYES BLU	HEIGHT 6-00	WEIGHT 180	BIRTHDATE Mo 4/8/1990 Day Year	RACE W	DISPOSITION OF VEHICLE ON ORDERS OF: RELEASED TO MATTHEW HOVE				
OTHER <input type="checkbox"/>	HOME PHONE (714)634-2406		BUSINESS PHONE NONE									
INSURANCE CARRIER NONE										POLICY NUMBER		
DIR OF TRAVEL S		ON STREET OR HIGHWAY OPEN DESERT					SPEED LIMIT	VEHICLE TYPE 02			DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input checked="" type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER	SHADE IN DAMAGED AREA
PARTY 2	DRIVER'S LICENSE NUMBER E163765155249		STATE MI	CLASS F	AIR BAG P	SAFETY EQUIP. P	VEH. YEAR 2004	MAKE / MODEL / COLOR BUCKSHOT X5 ORG/BLK	LICENSE NUMBER NONE	STATE		
DRIVER <input checked="" type="checkbox"/>	NAME(FIRST, MIDDLE, LAST) SHANNON DUANE EIFERT											
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS 17804 120TH AVE.											
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP NUNICA MI 49448											
BICY- CLIST <input type="checkbox"/>	SEX M	HAIR BRN	EYES BLU	HEIGHT 6-01	WEIGHT 210	BIRTHDATE Mo 3/29/1976 Day Year	RACE W	DISPOSITION OF VEHICLE ON ORDERS OF: TOWED AWAY BY DRIVER				
OTHER <input type="checkbox"/>	HOME PHONE (616)837-7898		BUSINESS PHONE (616)502-3090									
INSURANCE CARRIER NONE										POLICY NUMBER		
DIR OF TRAVEL N		ON STREET OR HIGHWAY OPEN DESERT					SPEED LIMIT	VEHICLE TYPE 42			DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input checked="" type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER	SHADE IN DAMAGED AREA TOP VIEW
PARTY 3	DRIVER'S LICENSE NUMBER			STATE	CLASS	AIR BAG	SAFETY EQUIP.	VEH. YEAR	MAKE / MODEL / COLOR	LICENSE NUMBER	STATE	
DRIVER <input type="checkbox"/>	NAME(FIRST, MIDDLE, LAST)											
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS											
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP											
BICY- CLIST <input type="checkbox"/>	SEX M	HAIR BRN	EYES BLU	HEIGHT 6-01	WEIGHT 210	BIRTHDATE Mo 3/29/1976 Day Year	RACE W	DISPOSITION OF VEHICLE ON ORDERS OF: MILITARY				
OTHER <input type="checkbox"/>	HOME PHONE		BUSINESS PHONE									
INSURANCE CARRIER										POLICY NUMBER		
DIR OF TRAVEL		ON STREET OR HIGHWAY					SPEED LIMIT	VEHICLE TYPE			DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER	SHADE IN DAMAGED AREA
REPREPARER'S NAME D. CHEAK 016842										DISPATCH NOTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A	REVIEWER'S NAME RM BIRD 964	DATE REVIEWED 1/26/08

DATE OF COLLISION (MO. DAY YEAR)				TIME(2400)		NCIC #		OFFICER I.D.					NUMBER					
12/25/2005				1300		9625		016842					05-12-53					
WITNESS ONLY	PASSENGER ONLY	AGE	SEX	EXTENT OF INJURY('X' ONE)				INJURED WAS ('X' ONE)					PARTY NUMBER	SEAT POS.	AIR BAG	SAFETY EQUIP.	EJECTED	
				FATAL INJURY	SEVERE INJURY	OTHER VISIBLE INJURY	COMPLAINT OF PAIN	DRIVER	PASS.	PED.	BICYCLIST	OTHER						
<input type="checkbox"/> #	<input type="checkbox"/>	15	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1	1	P	W	1				
NAME / D.O.B. / ADDRESS																		
KYLE PRZYSIECKI (04/08/1990) 1723 BEVERLEY DR. ORANGE CA 92868																		
TELEPHONE (714)634-2406																		
(INJURED ONLY) TRANSPORTED BY: IMPERIAL COUNTY CORONER TAKEN TO: IMPERIAL COUNTY CORONER																		
DESCRIBE INJURIES: FATAL INTERNAL TRAUMA, PRONOUNCED DEAD AT THE SCENE BY DR. REESE FROM PIONEER MEDICAL CENTER AT 1108 HOURS, CORONER CASE #C-05-238.																		
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																		
<input type="checkbox"/> #	<input checked="" type="checkbox"/>	29	F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2	3	P	P	0
NAME / D.O.B. / ADDRESS																		
TRISHA EIFERT (06/22/1976) 17804 120TH AVE. NUNICA MI 49448																		
TELEPHONE (616)837-7898																		
(INJURED ONLY) TRANSPORTED BY: TAKEN TO:																		
DESCRIBE INJURIES:																		
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																		
<input checked="" type="checkbox"/> #	<input type="checkbox"/>	20	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
NAME / D.O.B. / ADDRESS																		
MATTHEW TODD HOVE (02/25/1985) 2210 S. LEWIS ST. ANAHEIM CA 92805																		
TELEPHONE (714)939-9878																		
(INJURED ONLY) TRANSPORTED BY: TAKEN TO:																		
DESCRIBE INJURIES:																		
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NAME / D.O.B. / ADDRESS																		
RICHARD OTTO RIECK (01/30/1966) 9360 EVERGREEN DR. TRAVERSE CITY MI 49684																		
TELEPHONE (231)275-3430																		
(INJURED ONLY) TRANSPORTED BY: TAKEN TO:																		
DESCRIBE INJURIES:																		
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<input checked="" type="checkbox"/> #	<input type="checkbox"/>	54	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
NAME / D.O.B. / ADDRESS																		
DAVID WOLFE (09/15/1951) 1302 MILLBURY RD. NORTHWOOD OH 43619																		
TELEPHONE (419)836-7600																		
(INJURED ONLY) TRANSPORTED BY: TAKEN TO:																		
DESCRIBE INJURIES:																		
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																		
<input type="checkbox"/> #	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
NAME / D.O.B. / ADDRESS																		
(INJURED ONLY) TRANSPORTED BY: TAKEN TO:																		
DESCRIBE INJURIES:																		
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																		
PREPARER'S NAME				I.D. NUMBER		MO. DAY YEAR		REVIEWER'S NAME					MO. DAY YEAR					
J. D. CHEAK				016842		12/25/2005												

STATE OF CALIFORNIA  
**SKETCH DIAGRAM**

CHP 555 Page 4(Rev. 8-97) OPI 042

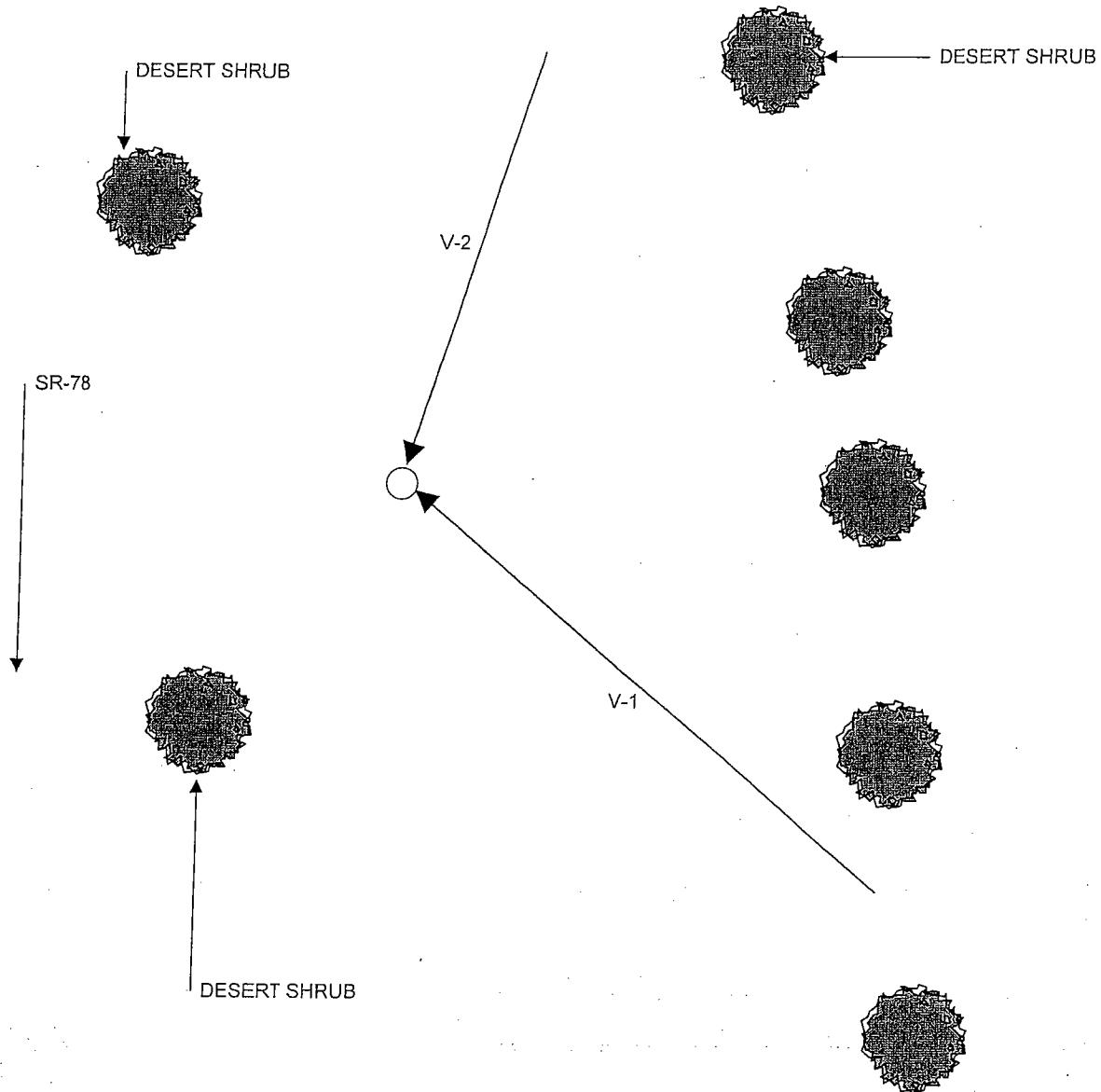
PAGE 4 OF 3

DATE OF INCIDENT 12/25/2005	TIME 1300	NCIC NUMBER 9625	OFFICER I.D. 016842	NUMBER 05 12 53
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ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE= )

IMPERIAL SAND DUNES  
RECREATIONAL AREA  
(GLAMIS )

OPEN DESERT



PREPARED BY M. D. DAVIDSON	I.D. NUMBER 017011	DATE 12/25/2005	REVIEWER'S NAME	DATE
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**STATE OF CALIFORNIA  
FACTUAL DIAGRAM**

CHP 555 Page 4(Rev. 8-97) OPI 042

PAGE 5 OF 13

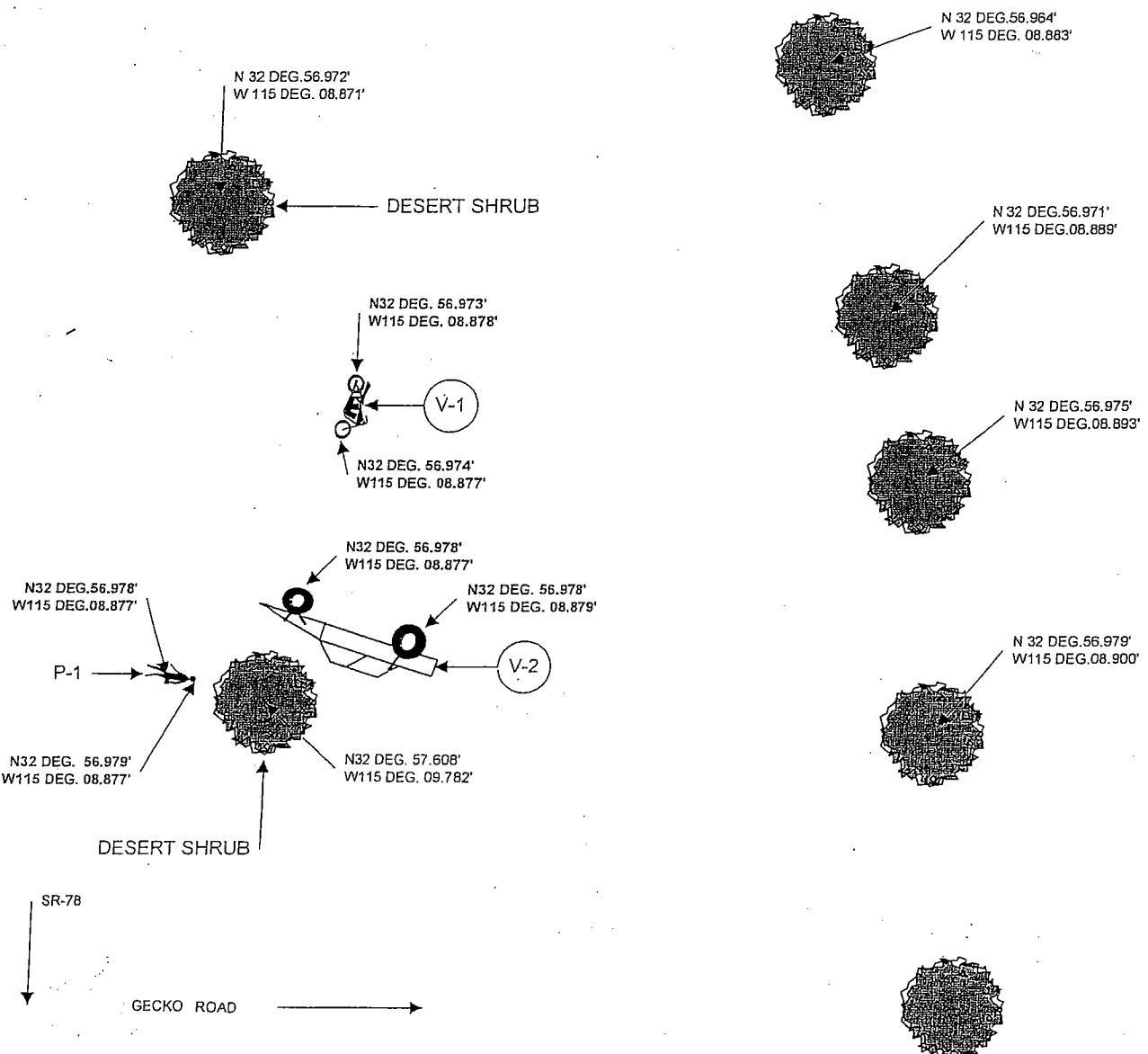
DATE OF INCIDENT 12/25/2005	TIME 1300	NCIC NUMBER 9625	OFFICER I.D. 016842	NUMBER 05 12 53
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ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE=

IMPERIAL SAND DUNES  
RECREATIONAL AREA  
( GLAMIS )



## OPEN DESERT



PREPARED BY M. D. DAVIDSON	I.D. NUMBER 017011	DATE 12/25/2005	REVIEWER'S NAME	DATE
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**NARRATIVE/SUPPLEMENTAL**PAGE 6 OF 13

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
12/25/2005	1300	9625		

1 **PHYSICAL EVIDENCE LEGEND:**

2

3 A STATION LINE WAS NOT UTILIZED DUE TO THE SURROUNDING OPEN DESERT  
4 TERRAIN. ALL PHYSICAL EVIDENCE LOCATIONS WERE OBTAINED BY GLOBAL  
5 POSITIONING SATELLITE ( GPS ) COORDINATES.

6

7

8 **VEHICLE POINTS OF REST:**

9

10

11 V-2 RR- N 32 DEGREES 56.978'  
12 W115 DEGREES 08.877'

13

14 RF- N 32 DEGREES 56.978'  
15 W115 DEGREES 08.879'

16

17 V-1 REAR- N 32 DEGREES 56. 973'  
18 W 115 DEGREES 08.878'

19

20 FRONT- N 32 DEGREES 56. 974'  
21 W 115 DEGREES 08.877'

22

23 PARTY #1 HEAD- N 32 DEGREES 56.978'  
24 W 115 DEGREES 08.877'

25

26 GROIN- N 32 DEGREES 56.979'  
27 W 115 DEGREES 08.877'

STATE OF CALIFORNIA

**NARRATIVE/SUPPLEMENTAL**

PAGE 7 of 13

DATE OF INCIDENT 12/25/2005	TIME 1300	NCIC NUMBER 9625	OFFICER I.D. 16842	NUMBER 05-12-53
--------------------------------	--------------	---------------------	-----------------------	--------------------

1 **FACTS**2 **NOTIFICATION**

3

4       I received a call from El Centro Communications Center of a fatal traffic collision on Gecko  
5 Rd. south of SR-78 at 1400 hours. I responded from the CHP/El Centro office and arrived on  
6 scene at 1455 hours. All times, speeds, and measurements are approximate. All measurements  
7 were obtained by global positioning satellite (GPS).

8

9 **SCENE**

10

11       The traffic collision occurred in the Imperial Sand Dunes Recreational Area (Glamis) which  
12 is federal land designated for recreational use by off highway vehicles. The collision occurred  
13 south of SR-78 and east of Gecko Rd. in the open desert at GPS location N 32 degrees 56.974  
14 and W 115 degrees 08.876. There are no designated lanes for traffic and there is no set speed  
15 limit. The open desert has small bumps/dips approximately 1.5 feet in depth. The path surface is  
16 composed of loose sand in this area. The area contains desert shrubs which are approximately 5  
17 feet each in height. The weather was sunny, clear and the roadway was dry at the time of the  
18 collision.

19

20 **PARTIES/VEHICLES**

21

22       Party #1 (Przysiecki) was located lying on his back facing in a westerly direction and was  
23 pronounced dead at the scene by Dr. Reese at 1408 hours. Party #1 was identified by  
24 Witness #1 (Hove). Party #1 was identified as the driver of Vehicle #1 by Witness #1 and  
25 Party #2 (Eifert). P-1 did not have a helmet on upon my arrival it was taken off so paramedics  
26 could perform first aid. P-1 did have a full face helmet, but the DOT sticker and the make were  
27 painted over. The helmet contained scrapes along the top.

28

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J.D. CheakI.D. NUMBER  
16842DATE  
12/26/2005

REVIEWER'S NAME

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STATE OF CALIFORNIA

**NARRATIVE/SUPPLEMENTAL**

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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**1 PARTIES/VEHICLES CONTINUED**

2

3       **Vehicle #1 (Honda)** was located lying on its left side on the sand facing in an easterly  
 4 direction. Vehicle #2 sustained moderate damage to the front tire, handlebars, both foot pegs,  
 5 front axle and crankcase. A white whip with an orange flag was located along the left rear of V-1.  
 6 While Witness #1 was loading V-1 into the back of his truck, I observed him click down a total of  
 7 three times on the clutch to get V-1 in neutral. I was unable to determine what gear V-1 was in  
 8 prior to the collision, due to W-1 moving the clutch prior to me inspecting V-1.

9

10       **Party #2 (Eifert)** was located sitting on the sand just east of the traffic collision scene. P-2  
 11 was identified by his Michigan Driver License. P-2 was identified as the driver of V-2 by his own  
 12 admission, P-2 is the registered owner of V-2 and statement of his passenger.

13

14       **Vehicle #2 (Buckshot)** was located on its left side in the sand facing in an easterly  
 15 direction. V-2 sustained minor damage to the left front, left headlight and the left front shock was  
 16 broken. The seatbelts were inspected and found to be in good working order. A white whip with a  
 17 black and white flag was located along the top of V-2. No prior mechanical defects were noted or  
 18 claimed.

19

**20 24 HOUR HISTORY**

21

22       I contacted Party #1's (Przysiecki) stepfather at the scene and he did not remember P-1's  
 23 full activities from the prior 24 hours. P-1 went to his aunt's house in Orange, Ca. on 12-24-05 at  
 24 5:00 P.M. and was there until 8:30 P.M. P-1 spent the night at his father's house and woke up at  
 25 5:30 A.M. They left to the Sand Dunes at that time. They stopped at the Denny's in Moreno  
 26 Valley and had breakfast. They arrived at the Imperial Sand Dunes Recreational Area at 10:30  
 27 A.M. and P-1 began riding at 11:00 A.M. P-1 was very experienced and had been riding since he  
 28 was three years old.

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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**1 PHYSICAL EVIDENCE**

2

3 See Physical Evidence Page.

4

**5 AGENCIES INVOLVED**

6

7 California Highway Patrol (CHP) El Centro Area

8 2331 Highway 86

9 Imperial, Ca. 92251

10 (760) 482-2500

11

12 Officer M. Davidson #17011 (Prepared the factual diagram and took photographs).

13

14 Imperial County Sheriff (ICSO) Central Division

15 328 Applestill Rd.

16 El Centro, Ca. 92243

17 (760) 339-6311

18

19 Deputy Kelley #588

20 Deputy Marin #611

21 Sgt. Duran #848

22

23

24

25

26

27

28

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**NARRATIVE/SUPPLEMENTAL**

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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**1 AGENCIES INVOLVED CONTINUED**

2

3 Gold Cross Paramedic #2640

4 905 S. Imperial Ave.

5 El Centro, Ca. 92243

6 (760) 353-3380

7

8 Paramedic S. Holt

9 Paramedic J. Cerdá

10

11 Pioneers Memorial Hospital

12 207 Legion Rd.

13 Brawley, Ca. 92227

14 (760) 351-3333

15

16 Dr. Reese

17

**18 STATEMENTS**

19

20 **Party #1 (Przysiecki)** was unable to relate anything, due to his fatal injuries.

21

22 **Witness #1 (Hove)** was contacted at scene and related the following: He was riding with  
 23 P-1 and was staggered to the right of P-1, approximately 50 feet behind P-1. They had just  
 24 left P-1's father's campsite located near Gecko Rd. and SR-78 and were traveling to P-1's  
 25 stepfather's campsite located near Gecko Rd. and mile post marker 2.5. They were in  
 26 fourth gear at approximately 45 mph traveling in a southeast direction. They were about to  
 27 travel in between some shrubs when he noticed V-2 entering the area northbound in  
 28 between shrubs. He stopped and noticed P-1 did not notice V-2 because of the shrubs

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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1 and was going to collide into V-2. V-1 collided into the left front of V-2. After the collision  
 2 P-1 was thrown off of V-1 and landed on the sand. He stated that he had been with P-1  
 3 the entire morning and P-1 does not drink alcohol nor does he use any drugs.  
 4

5 Party #2 (Eifert) was contacted at scene and related the following: He was traveling in a  
 6 northeast direction leaving his campsite and traveling with a group of other vehicles  
 7 towards SR-78. He was in second gear and estimated his speed to be 40 mph. He was  
 8 traveling down a hill and entering a flat part of the sand and did not notice any vehicles or  
 9 see any whips traveling in the area. He began entering an area that contained shrubs  
 10 when he noticed something coming from the left side. He swerved V-2 to the right. He  
 11 was unable to avoid V-1 and was struck along the left front by V-1. After the collision V-2  
 12 rolled over onto its left side. P-2 has been driving off road for approximately ten years and  
 13 been to Glamis a total of three times. P-2 had V-2 for approximately three months. P-2  
 14 never noticed V-1 as he was traveling down the hill. He noticed V-1 when he was  
 15 approximately 50 feet from the collision scene.

16

17 **STATEMENTS CONTINUED**

18

19 Passenger #1 (T. Eifert) was contacted at scene and related the following: She was  
 20 sitting in the right front of V-2 and P-2 was driving. They were traveling in a northerly direction at  
 21 40 mph. She just remembers entering an area with shrubs and never saw V-1 until after the  
 22 collision. After the collision V-2 rolled over onto its left side.

23

24 Witness #2 (Rieck) was contacted at scene and related the following: He was traveling  
 25 approximately 150 feet behind V-2 and they had just left the campsite. He was at the top of a hill  
 26 and V-2 was at the bottom. He estimated V-2 was traveling between 45-50 mph. He noticed V-2  
 27 was entering an area with shrubs and he observed V-1 was traveling straight towards V-2. He  
 28 believed V-1 was opened up all the way, but couldn't estimate a speed. P-2 swerved V-2 to the

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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1 right to avoid a collision, but it was too late and V-1 collided into V-2. He stated that there was no  
 2 way to avoid a collision and in that area it was hard to see because of the shrubs and everything  
 3 is flat.

4

5       **Witness #3 (Wolfe)** was contacted at scene and related the following: He was sitting in the  
 6 right front seat and Witness #2 was driving. They were headed towards the SR-78 and were  
 7 approximately 200 feet behind V-2. He stated that V-2 was traveling on a flat part of the sand and  
 8 they were up on a hill. He estimated V-2's speed to be between 45-50 mph. He stated V-2 was  
 9 entering an area with shrubs and from where they were stopped he could see V-1 was traveling  
 10 straight towards V-2. He stated that P-2 attempted to avoid a collision by swerving V-2 to the  
 11 right, but it was too late. V-1 collided into the front of V-2. P-1 was thrown off of V-1 and V-2  
 12 rolled onto its left side. He stated that V-1 was traveling at a high rate of speed and appeared to  
 13 be opened up all the way. He stated that there was no way to avoid a traffic collision due to the  
 14 shrubs obstructing the visibility of P-2 and P-1.

15

**OPINIONS AND CONCLUSIONS****SUMMARY**

18

19       Party #1 (Przysiecki) was traveling on Vehicle #1 (Honda) southeast in the open desert of  
 20 the Imperial Sand Dunes Recreational Area (Glamis) in fourth gear, in excess of 45 mph.  
 21 Party #2 (Eifert) was traveling in Vehicle #2 (Buckshot) northeast in the open desert of the  
 22 Imperial Sand Dunes Recreational Area (Glamis) at 40 mph. Due to P-1's unsafe speed on an  
 23 off-highway vehicle, he entered the area that was flat and had desert shrubs in front of V-2. P-2  
 24 noticed something coming from the left side and attempted to take evasive action by swerving V-2  
 25 to the right. V-2 was unable to avoid V-1 and V-1 collided into the left front of V-2. After the  
 26 collision P-1 was thrown from V-1 and landed at his point of rest. V-2 rolled over onto its left side.  
 27 Summary was based on the statements obtained, damage to the involved vehicle and physical  
 28 evidence.

PREPARED BY  
J.D. CheakI.D. NUMBER  
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**NARRATIVE/SUPPLEMENTAL**

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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**1 AREA OF IMPACT (AOI)**

2

3       AOI #1 (V-1 vs V-2) was located using a GPS coordinate of approximately N 32 degrees  
4 56.974 and W 115 degrees 08.876.

5       AOI #2 (P-1 vs ground) was located using a GPS coordinate of approximately N 32  
6 degrees 56.979 and W 115 degrees 08.877.

7       AOI was based on the statements obtained, damage to the involved vehicle and physical  
8 evidence.

9

**10 CAUSE**

11

12       The cause of this traffic collision is Party #1 (Przysiecki) by driving Vehicle #1 (Honda)  
13 in violation of 38305 VC- (No person shall drive an off-highway motor vehicle at a speed greater  
14 than is reasonable or prudent and in no event at a speed which endangers the safety of other  
15 persons or property). Cause was based on the statements obtained, damage to the involved  
16 vehicle and physical evidence.

17

**18 RECOMMENDATIONS**

19

20       None.

21

22

---

PREPARED BY  
J.D. Cheak

I.D. NUMBER  
16842

DATE  
12/26/2005

REVIEWER'S NAME

DATE



# Imperial County Coroner's Office

328 Applestill Rd. El Centro, CA 92243

Phone: (760) 339-6328 Fax: (760) 339-6330



**COPY**

Kyle Robert Przysiecki

Coroner Case Number: 05-238

CLASSIFICATION	Manner of Death Accident (Vehicle)	Sub Manner of Death				Deputy Coroner Charles R. Lucas	
	Type of Medical Examination Autopsy	Time Departed 1419	Time Arrival 1454	Date of Death 12/25/2005	Time of Death 1408		
DECEDENT PERSONAL DATA	Name-First Kyle	Middle Robert	Last Przysiecki			Marital Status Never Married	
	Age 15	Date of Birth 04/08/1990	Place of Birth CA	Height 6' 02"	Weight 205	Hair Brown	Eyes Blue
	Sex M	Teeth	Race White				SSN 623-42-8473
	Scars, Marks, Tattoos						
RESIDENCE	Address 1723 W. Beverley Dr.			City Orange		State Califorin	Zip 92868
PLACE OF DEATH	Place Open Desert					County Imperial	
	Address Geck Road, Glamis N32.94968 W 115.14801			City Glamis			State CA
REPORTING INFORMATION	Death Reported By		Agency CHP El Centro		Date 12/25/2005	Time 1412	Removed From Scene To
	Address 2331 Hwy. 86			City El Centro		State CA	Zip 92243
CAUSE OF DEATH	Immediate Cause: Chest and Abdominal Injuries						
	Due to: Blunt Force Trauma						
	DO NOT REPRODUCE OR RELEASE TO ANYONE						
	OUTSIDE THE CRIMINAL JUSTICE SYSTEM						
OTHER SIGNIFICANT CONDITIONS	None						
INJURY INFORMATION	Place of Injury Open Desert			Injury at Work? No	Date of Injury 12/25/2005	Time Unknown	Estimated
	Address of Injury GPS: N 32.94968 W 115.14801			City Glamis		County Imperial	State CA
	Injury Description The decedent was driving a motorcycle involved in an accident						
IDENTIFICATION	Identification Method Visually			Identified By Father			
NOTIFIED	Name Michael Ted Przysiecki	Relationship Father	Mailing Address 1723 W. Beverley Dr. Orange, CA 92868				
	Notified By Charles R. Lucas	How Notified In Person			Date 12/25/2005	Time 1454	
ADDITIONAL INFORMATION	Physician	Other Investigation CHP El Centro			Funeral Home Frye Chapel & Mortuary		

The Foregoing Instrument Is A Correct  
Copy Of The Original On File In This Office.

Harold D. Carter, Sheriff-Coroner

Attest: 6-6-06

Sheriff-Coroner

Charles R. Lucas Supervising Deputy Coroner

County Of Imperial, State Of California

Charles R. Lucas Supervising Deputy Coroner

C-05-238

Kyle Przysiecki

2

**COPY**1 **DEPUTY CORONER:**

2 I, Charles R. Lucas, Supervising Deputy Coroner, conducted this  
3 investigation for the Imperial County Coroner's Office.

4 **RECEIPT OF CALL:**

5 On Sunday, December 25, 2005, at approximately 1412 hours, I received  
6 a telephone call at my residence from the Imperial County Sheriff's Office  
7 Communication Center, advising me of a coroner case involving a deceased  
8 person located at Glamis. I immediately responded to that location.

9 **ARRIVAL AT SCENE:**

10 On December 25, 2005, at approximately 1454 hours, I arrived at the  
11 scene and met with the Sheriff's Deputy's on scene, who directed me to the  
12 decedent's location.

13 **DESCRIPTION OF SCENE / GPS:**

14 The scene is that of open desert approximately 200 yards east of Gecko  
15 Road in the Imperial Sand Dunes Recreation Area otherwise known as Glamis.

16 The GPS for this location is N 32.94968 and W 115.14801.

17 **VIEWING OF DECEDENT:**

18 Upon my arrival I observed the decedent was lying on the east side of a  
19 small dune covered by a yellow emergency blanket. Upon removal of the blanket  
20 I saw that the decedent was lying supine and had medical intervention devices in  
21 place that are described as follows: 3 electrocardiogram patches, 1 to the upper  
22 right chest, 1 to the upper left chest, and 1 to the left side; an endotracheal tube;  
23 and 1 intravenous line in the right inner arm.

C-05-238

Kyle Przysiecki

**COPY** 3

1       The decedent did not show signs of rigor or cyanosis, but lividity was  
2       present on the back area of the decedent. I did not observe any signs of foul play  
3       type trauma to the decedent's person.

4       The decedent is a White male adult, 15 years of age, 6'2" tall, weighing  
5       approximately 205 lbs, with brown hair and blue eyes. I further noted the  
6       decedent was wearing grey and black motorcycle pants, grey and black  
7       motorcycle boots, and a grey and black motorcycle shirt.

8       **PROPERTY:**

9       While at the scene I initiated an Imperial County Coroner's Office property  
10      receipt number 1116, to reflect that no property was retained by the Imperial  
11      County Coroner's Office.

12      **REMOVAL / TRANSPORTATION:**

13       Prior to removal the decedent was placed in a removal pouch and then  
14       transported to the Imperial County Coroner's Facility, located at 799 Highway 86,  
15       Brawley, CA.

16      **IDENTIFICATION:**

17       The decedent's father, Michael Przysiecki, identified him as Kyle  
18       Przysiecki, with a date of birth of April 8, 1990.

19      **NOTIFICATION:**

20       Paramedics made notification to the decedent's father, Michael Przysiecki,  
21       on December 25, 2005, prior to my arrival

22      **X-RAYS:**

23       No x rays were taken of the decedent.

C-05-238

Kyle Przysiecki

**COPY** 4**1 POST MORTEM EXAMINATION:**

2 On December 30, 2005, at approximately 0835 hours, a post mortem  
3 examination was conducted under the direction of Darryl J. Garber, M.D.,  
4 Forensic Pathologist. Present at the post mortem examination was Autopsy  
5 Assistant Miguel Del Valle and I.

6 At the conclusion of the post mortem examination at approximately 0935  
7 hours, Dr. Garber listed the cause of death as; (A) **Chest and Abdominal**  
8 **Injuries**, (B) **Blunt Force Trauma**, other conditions; **none**.

**9 FINGERPRINTS / PHOTOGRAPHS:**

10 Deputy Coroner Mike Mistri took fingerprints of the decedent at the post  
11 mortem examination.

12 I took photographs of the scene and Deputy Coroner Mike Mistri to  
13 photographs at the post mortem examination.

**14 INVESTIGATION:**

15 Subsequent investigation revealed that on December 25, 2005, at  
16 approximately 1320 hours the decedent, Kyle Przysiecki, was riding a motorcycle  
17 in generally a southeasterly direction when a dune buggy traveling in generally a  
18 northeast direction collided with the decedent. The collision caused the decedent  
19 to be ejected from the motorcycle and the dune buggy to roll over on the driver's  
20 side.

21 Emergency medical assistance was summoned and paramedics arrived in  
22 an ambulance. The paramedics evaluated the decedent and started emergency  
23 care. The information from their evaluation was relayed to the base hospital

C-05-238

Kyle Przysiecki

**COPY** 5

1 where after careful consideration Doctor Rees pronounced the decedent dead at  
2 1408 hours.

3 Based upon all of the evidence, toxicology and autopsy information, this  
4 case has been classified as an **accidental** death by, the Imperial County  
5 Coroner's Office and me.

6 **TOXICOLOGY TESTS:**

7 On December 30, 2005, during the post mortem examination, a sample of  
8 the decedent' s central blood, urine, and bile was retained for toxicology testing.

9 On January 6, 2005, the Imperial County Coroner's Office received the  
10 toxicology test results, which indicates that the decedent ingested no detectible  
11 substances prior to his death. For further information refer to Toxicology Report  
12 in the file.

13 **WITNESSES:**

14 1. Darryl J. Garber, M.D., Forensic Pathologist, Rancho Mirage, CA  
15 2. Miguel Del Valle, Autopsy Assistant, Imperial County Coroner's Facility,  
16 Brawley, CA  
17 3. Charles R. Lucas, Supervising Deputy Coroner, Coroner's Office, Imperial  
18 County Sheriff's Department, El Centro, CA  
19 4. Doctor Rees, El Centro Regional Medical Center, El Centro, CA  
20 5. J.D. Cheak, Officer, California Highway Patrol, El Centro, CA

21 **REFERENCE NOTES:**

22 1. Death certificate as filed with the Imperial County Health Department in file  
23 2. Autopsy protocol as per Dr. Garber in file

C-05-238

Kyle Przysiecki

**COPY**

6

- 1     3.     Imperial County Coroner's property receipt numbered 1116 in file
- 2     4.     Toxicology test results in file
- 3     5.     Photographs in file on compact disk
- 4     6.     Fingerprints in file
- 5     7.     California Highway Patrol Report number 05-12-53, as completed by  
6              Officer Cheak in file

7

8

9              Harold D. Carter

10             Sheriff-Coroner

11             Imperial County, CA

12

13

14

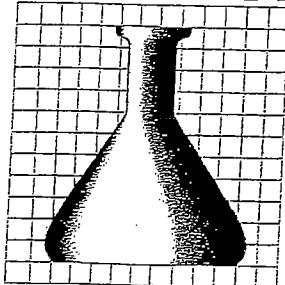
BY:  Charles R. Lucas

15

Supervising Deputy Coroner

16

17     HDC/CRL

**BIO-TOX****BIO-TOX LABORATORIES**Director  
Romulo Tabo, M.D.Chief Toxicologist  
Dale R. Somers, C.L.S.Toxicologist  
Maureen Black, C.T.S.**COPY**IMPERIAL COUNTY SHERIFF-CORONER  
328 APPLESTILL RD.  
EL CENTRO, CA 9224305-238  
PRZYSIECKI, KYLE R.

PATIENT NAME	SEX	DATE OF DEATH
PRZYSIECKI, KYLE R.	M	12/25/05

BTL NUMBER	REQUESTING AGENCY	REQUESTED BY	AGENCY NUMBER
6-60349-9	2438	LUCAS	05-238

SPECIMEN	DATE COLLECTED	TIME TAKEN	DATE RECEIVED	DATE REPORTED
BLOOD	12/30/05	09:03	01/04/06	01/06/06

## EXPANDED IMMUNOASSAY DRUG SCREEN

## SAMPLE SCREENED FOR:

AMPHETAMINES (AMPHETAMINE, METHAMPHETAMINE), BENZODIAZEPINES, CANNABINOIDS, COCAINE AND/OR METABOLITE, OPIATES (MORPHINE, CODEINE) PHENCYCLIDINE (PCP), BARBITURATES AND ALCOHOL.

## TEST

## RESULTS

ALCOHOL, ETHYL BLOOD

0.00% (W/V)

TRAFFIC PANEL BLOOD

NONE DETECTED

**CONFIDENTIAL**  
 DO NOT REPRODUCE OR RELEASE TO ANYONE  
 OUTSIDE THE CRIMINAL JUSTICE SYSTEM

The Foregoing Instrument Is A Correct  
 Copy Of The Original On File In This Office.  
 Attest: 6-6-06

Sheriff-Coroner  
 County Of Imperial, State of California  
 By Vern Royer Deputy



# CORONER'S OFFICE COUNTY OF IMPERIAL



HAROLD D. CARTER  
Sheriff-Coroner-Marshall

**COPY**

DARRYL J. GARBER, M.D.  
Forensic pathologist

## AUTOPSY PROTOCOL

NAME OF DECEDEDENT: PRZYSIECKI, KYLE CORONER'S CASE: #05-238

### ANATOMIC SUMMARY:

- I. Blunt force trauma
  - A. Chest and abdominal injuries
    - 1. Transected thoracic aorta
      - a. Bilateral hemothoraces (1,190 left, 260 cc right)
      - b. Bilateral pulmonary atelectasis
    - 2. Multiple rupture/lacerations, liver and right adrenal gland
    - 3. Multiple fractures, right ribs 3 through 7, left ribs 3 through 10, pelvis and right femur
  - B. Multiple abrasions, contusions and lacerations, face, torso, bilateral upper and bilateral lower extremities
- II. Toxicology (see separate report)

### CONCLUSION: (Cause of Death)

- A) Chest and abdominal injuries
- B) Blunt force trauma

OTHER CONDITIONS: None

DATE AND TIME OF AUTOPSY: December 30, 2005 @ 8:35 a.m. to 9:35 a.m.

The foregoing instrument is a correct copy of the original on file in this office.  
Attest: 6-6-06

Sheriff-Coroner  
County of Imperial, State of California

By Norma Royce Deputy

**CONFIDENTIAL**

DO NOT REPRODUCE OR RELEASE TO ANYONE  
OUTSIDE THE CRIMINAL JUSTICE SYSTEM

**COPY**

NAME OF DECEDENT: PRZYSIECKI, KYLE CORONER'S CASE: #05-238  
PAGE TWO

EXTERNAL EXAMINATION: The body is that of a well-developed and well-nourished white teenage male which appears to be about the stated age of 15 years old, weighing approximately 205 pounds and measuring approximately 74" in height. The body is in rigor mortis. There are no significant scars over the body. An intravenous line is present in the right antecubital fossa. A thoracostomy tube is present in the right anterior superior chest. There are multiple abrasions, contusions and lacerations over the body which will be separately described. The hair is brown. The head is not remarkable except for some injuries to be described. The eyes are blue. The eyes and ears show no abnormality. The nose and mouth are normal and the mouth contains an endotracheal tube. The chest and abdomen are normal except for some injuries to be described. Genitalia are those of a normal teenage male. The extremities show multiple injuries to be described.

DESCRIPTION OF EXTERNAL INJURIES: There are multiple 1 to 3 cm red-brown abrasions over the bilateral chin and left cheek. There is a 6 x 13 cm red-brown abrasion over the right lower quadrant of the abdomen. There is a 2 cm red abrasion over the suprapubic region of the lower abdomen. There are multiple 0.5 to 3.4 x 7 cm pink and red-brown abrasions and contusions over the bilateral anterior thighs, right anterior knee, bilateral anterior lower legs, right dorsal foot and right posterior thigh. There is a 5 cm irregular open laceration over the left anterior lateral thigh. There is a 1 x 3.5 cm red-brown abrasion over the right posterior flank. There is a 0.7 x 4 cm red-brown abrasion over the right lower back. There are multiple 0.5 to 2 cm red-brown and purple abrasions and contusions over the bilateral dorsal hands.

DESCRIPTION OF INTERNAL INJURIES: Examination of the chest reveals multiple fractures of the right ribs 3 through 7 and left ribs 3 through 10 anteriorly and laterally. The aorta is completely transected at the descending thoracic aorta 2 cm distal to the aortic arch. There are 1,190 cc of liquid and clotted blood in the left pleural cavity, 260 cc of liquid and clotted blood in the right pleural cavity. The lungs show bilateral atelectasis. Examination of the abdomen reveals comminuted fractures of the pelvis. Examination of the liver reveals multiple rupture/lacerations of the left lobe measuring 3.7 to 11.3 cm with extensive fragmentation of the right lobe of the liver. The right adrenal gland is extensively fragmented and hemorrhagic.

Examination of the right femur reveals a mid shaft fracture dislocation.

OPINION: These are fatal chest and abdominal injuries due to blunt force trauma leading to the demise of this 15-year-old white male.

INTERNAL EXAMINATION: The body is opened with the usual Y-shaped incision. The organs of the thorax and abdomen are in their normal positions. The pleural, pericardial and peritoneal surfaces are smooth and glistening. There are extensive bilateral hemothoraces as previously described with a midline shift of the mediastinum to the right. The liver is at the right costal margin. The mediastinum is in the midline. The liver is at the right costal margin.

**COPY**

NAME OF DECEDENT: PRZYSIECKI, KYLE CORONER'S CASE: #06-238  
PAGE THREE

CARDIOVASCULAR SYSTEM: The heart weighs 320 gm. The epicardium is smooth and glistening. The myocardium is firm and red-brown. The endocardium and valves are thin and glistening. The coronary arteries are normally developed. The aorta is normal in caliber and there is complete transection of the descending thoracic aorta 2 cm distal to the aortic arch. The great vessels of the neck and visceral arteries are normal in size. The great veins are collapsed and empty.

RESPIRATORY SYSTEM: The right lung weighs 410 gm, the left 310 gm. The visceral pleurae are smooth and glistening. The cut surfaces are contused and congested. The larynx, trachea and major bronchi are lined by smooth glistening mucosa.

GASTROINTESTINAL SYSTEM: The esophagus is normal. The stomach is empty. The small bowel contains red-brown chyme. The large bowel contains green-brown soft stool.

HEPATOBILIARY SYSTEM: The liver weighs 1,360 gm. The surface shows multiple rupture/lacerations with extensive fragmentation of the right lobe. The parenchyma is soft and hemorrhagic. The gallbladder is intact and contains 7 cc of bile. The bile ducts are normally developed. The pancreas is firm and pale.

HEMATOPOIETIC SYSTEM: The spleen weighs 230 gm. The surface is smooth. The parenchyma is soft and congested. The bone marrow is firm and red-brown.

UROGENITAL SYSTEM: The right kidney weighs 120 gm, the left 130 gm. The surfaces are smooth. The cortices are well demarcated from the medulla. The renal pelvis, ureters and urinary bladder are normally developed. The bladder contains 60 cc of urine. The prostate is normal in size. The testicles are normally descended and within the scrotum.

ENDOCRINE SYSTEM: The pituitary, thyroid and adrenal glands are normal in size and configuration and there is fragmentation of the right adrenal gland.

MUSCULOSKELETAL SYSTEM: The axial and appendicular skeleton is normally developed and shows the previously described injuries.

CENTRAL NERVOUS SYSTEM: The brain weighs 1,430 gm. The cerebral hemispheres are symmetrical with normal convolutions. The leptomeninges are clear and glistening. The cortex is well demarcated from the white matter. The ventricles are normal in size and lined by smooth glistening ependyma. The cerebrospinal fluid is clear. The basal ganglia are well delineated. The cerebellum, brain stem and Circle of Willis are normally developed.

FORENSIC PHOTOGRAPHY: Photographs are taken prior to beginning and during the autopsy.

**COPY**

NAME OF DECEDENT: PRZYSIECKI, KYLE CORONER'S CASE: #06-238  
PAGE FOUR

FORENSIC RADIOLOGY: No x-rays of the body are taken.

TOXICOLOGY: Blood from the left chest, bile and urine are submitted for routine toxicology.

HISTOLOGY: Tissue is retained in the hold jar.

WITNESS: Coroner's Deputy, Mike Mistriel, from the Imperial County Sheriff's Office, witnessed the autopsy.

OPINION: On the basis of the autopsy findings, it is evident that this 15-year-old white male suffered from chest and abdominal injuries due to blunt force trauma which resulted in his rapid demise. The decedent was reportedly driving his motorcycle through the open desert when he was struck by a dune buggy traveling across his path. He was pronounced dead at the scene of the accident in the open desert.

Darryl J. Garber, M.D.  
Forensic Pathologist

3/23/06  
Date

## AUTOPSY CHECK LIST

**COPY**

Name of Decedent: Fayyseckel, Nyle File Number: 05-238

Autopsy Location: \_\_\_\_\_ Doctor: \_\_\_\_\_

Doctor:

Date/Time:

EXTERNAL WT	205	Bone	PERITONEUM	Fluid	BRAIN WT	1430
HT	74"	Blade		Adhes	Dura	
Sclera			LIVER WT	(360)	Fluid	
Teeth			Caps	Ext frag'd R lobe	Ventric	
Mouth			Lobul	Committ myofib's	Vessels	
Tongue			Fibros	Calc	Ears	
Nose			GB	Org 75% lobe	Nasal Sin	
Chest			Calc	3.7-11.3cm		
Breasts			Bile ducts			
Abdomen			SPLEEN WT	20	PHOTO	
Scar			Color		YES	
Genital			Consists		NO	
Edema			Malpig		TOXICOLOGY	
Skin			PANCREAS		Blood	
Decub			ADRENALS		Bile	
HEART WT	320		KIDNEYS WT	R (20) frag'd L (30) Almond	Urine	
Pericard			Caps		Stomach Content	
Hypert			Cortex		Liver	
Dilat			Vessels		Brain	
Muscle			Pelvis		Vitrious	
Valves			Ureter		Spleen	
Coronary			BLADDER	work ~ 60cc urine	Kidney	
AORTA		Completely transected	GENITALIA	intact	TISSUE	
VESSELS			Prost		Tissue Bag	
LUNGS WT			Testes		Cassettes	
R 60			Uterus		Frozen	
L 30			Tubes		BODY X-RAYS	
Adhes			Ovar		Yes	
Fluid			OESOPHAGUS		No	
Atelectasis			STOMACH			
Oedema			DUOB & SM INT			
Congest			APPENDIX			
Consol			LARGE INT			
Bronchi			ABDOM NODES			
Nodes			SKELETON			
HARYNX			Spine			
RACHEA			Marrow			
HYROID						
HYMUS						
ECK						
					ADDITIONAL COMMENTS:	

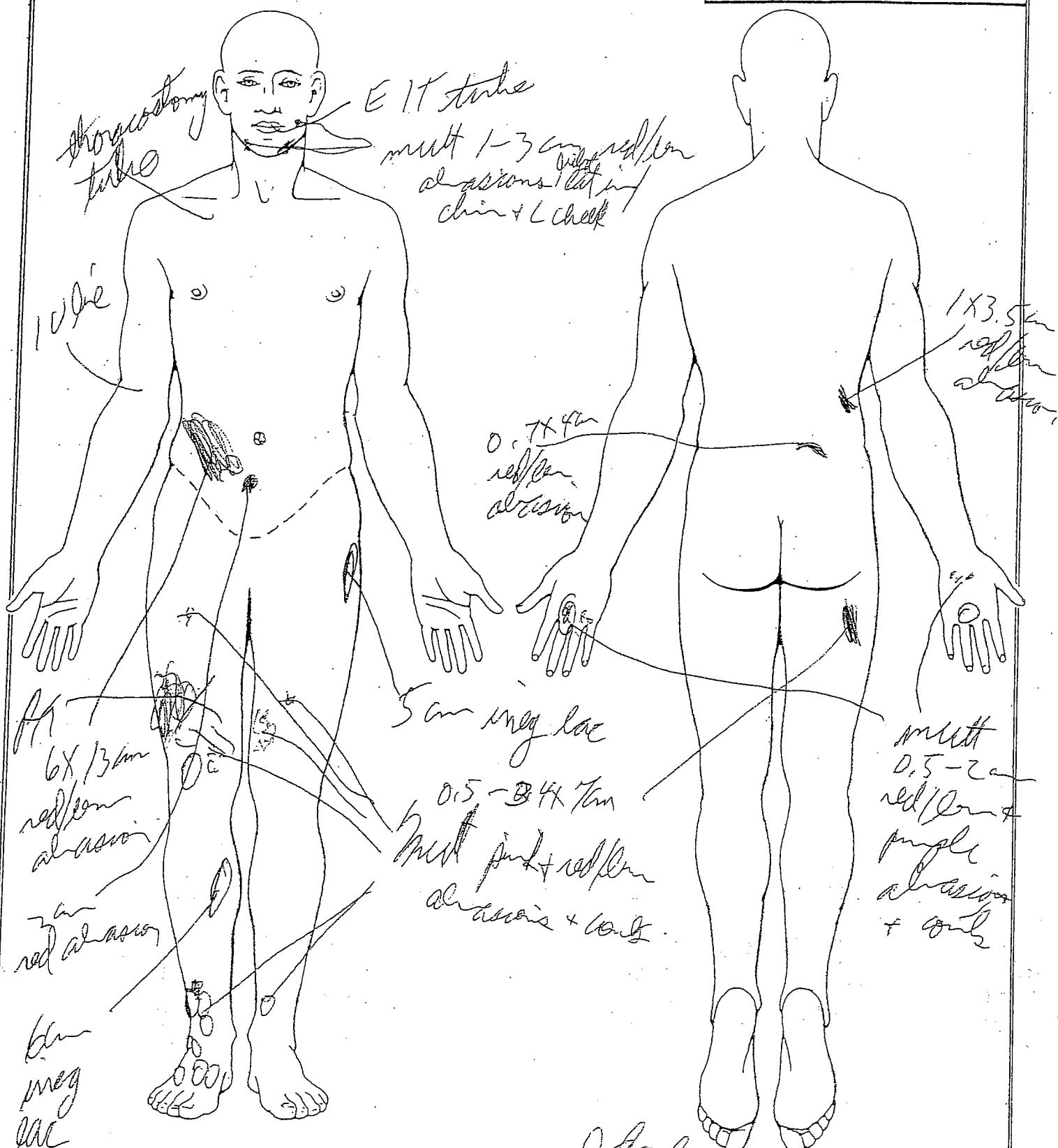
**ADDITIONAL COMMENTS:**

20

COPY

05-238

Przysecki, Kyle

M.D.  
Deputy Medical Examiner



# Imperial County Coroner's Office

328 Applestill Rd. El Centro, CA 92243 Phone: (760) 339-6328 Fax: (760) 339-6330

**COPY****AUTOPSY MEMO**

NAME	Kyle Robert Przysiecki	SEX	M	HEIGHT	6' 02"
Death DATE	12/25/2005	AGE	15	WEIGHT	205
TIME	1408	RACE	White	HAIR	Brown
PLACE	Open Desert	COMPLX	Med	EYES	Blue

Place of Autopsy Imperial County Coroner's Facility, 799 Highway 86, Brawley, California, 92227

Attending Physician (if any) \_\_\_\_\_

**SUMMARY OF CASE:**

The decedent was driving his motorcycle through the open desert when a dune buggy traveling across his path collided with him, ejecting him off the motorcycle.

LAB TESTS:  Traffic  Coroner  Comprehensive  Other**AUTOPSY REPORT**DATE 12/30/2005 TIME \_\_\_\_\_  NATURAL  ACCIDENT  HOMICIDEPATHOLOGIST Darryl J. Garber  SUICIDE  PENDING  UNDETERMINEDTECHNICIAN \_\_\_\_\_ SPECIMENS RETAINED:  BLOOD  BILE  URINE  TISSUE X-RAYS TAKEN # \_\_\_\_\_  JAWS TAKEN  LIVER  VIT.  CSF

CAUSE OF DEATH: (A) Chest and abdominal injuries - Secs.  
 (B) Blunt force trauma - Secs  
 (C) \_\_\_\_\_  
 (D) \_\_\_\_\_

OTHER CONDITIONS: NoneDecedent: Kyle Robert Przysiecki  
Case Number: 05-238Deputy Coroner: Charles R. Lucas, Supervising Deputy Coroner  
Date 12/30/2005



# Imperial County Coroner's Office

328 Applestill Rd. El Centro, CA 92243

Phone: (760) 339-6328 Fax: (760) 339-6330



# COPY

## AUTOPSY INFORMATION SHEET

Autopsy Date: 12/30/2005 Time Start 0835 Time End: 0935 Seal Cut: \_\_\_\_\_

Coroner at Post:

Charles R. Lucas, Supervising  
Deputy Coroner

Michael Mistriel, Deputy Coroner

Pathologist:

Darryl J. Garber

Autopsy Assistant:

Miguel Del Valle

I.D. Division

Witnesses:

Name	Agency

NOTES:

Central Blood (time):	<u>0903</u>	By:	<u>Dr. G</u>	Chest Blood (time):		By:	
Peripheral Blood (time):		By:		Vitreous Humor:		By:	
Urine Taken:	<u>0910</u>	By:	<u>Dr. G</u>	Liver for Tox:		By:	

Body Organ Weights (Grams):

Right Kidney:	<u>120</u>	Right Lung:	<u>410</u>	Brain:	<u>1430</u>
Left kidney:	<u>130</u>	Left Lung:	<u>310</u>	Stomach:	
Liver:	<u>1360</u>	Heart:	<u>320</u>	Uterus:	
Spleen:	<u>230</u>	Pancreas:		Other:	

A PRENOXIC LOADING

FRACTURE PELVIS

1 RT RIBS 3-7 ANTERIOR  
1 LT RIBS 3-10 11

Decedent: Kyle Robert Przysiecki  
Case Number: 05-238

Deputy Coroner: Charles R. Lucas, Supervising Deputy Coroner  
Date 12/30/2005

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC HEALTH  
**COUNTY OF IMPERIAL**  
EL CENTRO, CALIFORNIA

CERTIFICATE OF DEATH

STATE OF CALIFORNIA  
USE BLACK INK ONLY / NO ERASURES, WASHOUTS OR ALTERATIONS  
VS-11 (REV 1/03)

3 2005 13 000823

STATE FILE NUMBER		3. LAST (Family)		LOCAL REGISTRATION NUMBER									
1. NAME OF DECEASED — FIRST (Given)		2. MIDDLE		PRZYSIECKI									
KYLE		ROBERT											
AKA. ALSO KNOWN AS — Include full AKA (FIRST, MIDDLE, LAST)		4. DATE OF BIRTH mm/dd/yy		5. AGE Yrs		6. SEX							
		04/08/1990		15		M							
7. IF UNDER ONE YEAR Months _____ Days _____ Hours _____ Minutes _____		8. HOURS (24 Hours)											
9. BIRTH STATE/FOREIGN COUNTRY		10. SOCIAL SECURITY NUMBER		11. EVER IN U.S. ARMED FORCES?		12. MARITAL STATUS (At Time of Death)		13. EDUCATION — Highest Level/Degree (see Worksheet on back)		14. WAS DECEASED SPANISH/HISPANIC/LATINO? (If yes, see worksheet on back.)		15. DECEASED'S RACE — Up to 3 races may be listed (see worksheet on back)	
CA		623-42-8473		<input type="checkbox"/> YES <input checked="" type="checkbox"/> X <input type="checkbox"/> NO <input type="checkbox"/> UNK		Nev. Mar.		10		<input type="checkbox"/> YES <input checked="" type="checkbox"/> X <input type="checkbox"/> NO		White	
16. DECEASED'S PLACE — Up to 3 places may be listed (see worksheet on back)		17. USUAL OCCUPATION — Type of work for most of life. DO NOT USE RETIRED		18. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.)		19. YEARS IN OCCUPATION							
Student				Public Education		10							
20. DECEASED'S RESIDENCE (Street and number or location)		21. CITY		22. COUNTY/PROVINCE		23. ZIP CODE		24. YEARS IN COUNTY		25. STATE/FOREIGN COUNTRY			
1723 W. Beverly Dr.		Orange		Orange		92868		15		California			
26. INFORMANT'S NAME, RELATIONSHIP		27. INFORMANT'S MAILING ADDRESS (Street and number or rural route number, city or town, state, ZIP)											
Angel Hisaw-Przysiecki - Mother		201 So. Magnolia #43 - Anaheim, CA 92804											
28. NAME OF SURVIVING SPOUSE — FIRST		29. MIDDLE		30. LAST (Maiden Name)									
31. NAME OF FATHER — FIRST		32. MIDDLE		33. LAST		34. BIRTH STATE							
Michael		Ted		Przysiecki		CA							
35. NAME OF MOTHER — FIRST		36. MIDDLE		37. LAST (Maiden)		38. BIRTH STATE							
Angel		Venus		Hisaw		CA							
39. DISPOSITION DATE mm/dd/yy		40. PLACE OF FINAL DISPOSITION											
12/30/2005		RES: Michael Przysiecki 1723 W. Beverly Dr. Orange, CA 92868											
41. TYPE OF DISPOSITION(S)		42. SIGNATURE OF EMBALMER		43. LICENSE NUMBER									
CR/RES		Not Embalmed											
44. NAME OF FUNERAL ESTABLISHMENT		45. LICENSE NUMBER		46. SIGNATURE OF LOCAL REGISTRAR		47. DATE mm/dd/yy							
Frye Chapel & Mortuary		FD 512				12/30/2005							
101. PLACE OF DEATH		102. IF HOSPITAL, SPECIFY ONE		103. IF OTHER THAN HOSPITAL, SPECIFY ONE									
Open Desert		<input type="checkbox"/> IP <input type="checkbox"/> EVOP <input type="checkbox"/> DOA <input type="checkbox"/> Hospice		<input type="checkbox"/> Nursing <input type="checkbox"/> Home/LTC <input type="checkbox"/> Decedent's Home <input checked="" type="checkbox"/> Other									
104. COUNTY		105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number or location)		106. CITY									
Imperial		Gecko Rd., GPS: N32.94968 W115.14801		Glamis									
107. CAUSE OF DEATH		Enter the chain of events — diseases, injuries, or complications — that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE.		Time Interval Between Onset and Death: (AT) Secs.		108. DEATH REPORTED TO CORONER? (C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>							
IMMEDIATE CAUSE (A) (Final disease or condition resulting in death) → Chest and Abdominal Injuries						(C-05-238)							
(B) Sequently, list conditions, if any, leading to the death on line. Enter UNDERLYING CAUSE (disease or injury that initiated the events (D) resulting in death) LAST		Blunt force trauma.		(CT) Secs.		109. BIOPSY PERFORMED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							
						110. AUTOPSY PERFORMED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No							
111. USED IN DETERMINING CAUSE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						112. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107 None							
113. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 112? (If yes, list type of operation and date.) No		114. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED. Decedent Attended Since Decedent Last Seen Alive		115. SIGNATURE AND TITLE OF CERTIFIER		116. LICENSE NUMBER		117. DATE mm/dd/yy					
(A) mm/dd/yy		(B) mm/dd/yy		118. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE									
119. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED. MANNER OF DEATH <input type="checkbox"/> Natural <input checked="" type="checkbox"/> Accidental <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined		120. INJURED AT WORK? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> UNK		121. INJURY DATE mm/dd/yy		122. HOUR (24 Hours)							
123. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.) Open Desert		124. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury) The decedent was driving a motorcycle that was involved in an accident.		125. LOCATION OF INJURY (Street and number, or location, and city, and ZIP) Glamis Dunes, GPS: N32.94968 W115.14801 - Glamis, CA 92248		126. SIGNATURE OF CORONER / DEPUTY CORONER Michael Mistrieli, Deputy Coroner		127. DATE mm/dd/yy		128. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER			
129. STATE REGISTRAR		A B C D E								FAX AUTH. #		CENSUS TRACT	
130054118*													

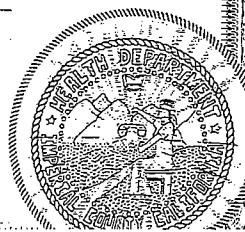
CERTIFIED COPY OF VITAL RECORDS  
STATE OF CALIFORNIA, COUNTY OF IMPERIAL

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
COPY OF THE ORIGINAL RECORD AS FILED IN THIS OFFICE.

DATE ISSUED DEC 30 2005

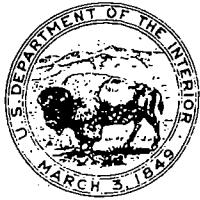
STEPHEN W. MUNDAY, M.D., M.P.H., M.S.  
LOCAL REGISTRAR  
IMPERIAL COUNTY, CALIFORNIA

This copy is not valid unless prepared on engraved border, displaying the date and signature of the Local Registrar.



# EXHIBIT

## “2”



## United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

IN REPLY  
REFER TO:

FEB 2 2007

Certified Mail - Return Receipt Requested

Venus Angelique Hisaw  
16302 Rhone Lane  
Huntington Beach, CA 92647

Dear Ms. Hisaw:

You have filed a wrongful death claim on behalf of your son, Kyle Przysiecki (Estate), in the amount of \$25,000,000.00 pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, which provides for settlement of claims for damages caused by the negligent act or omission of a government employee while acting within the scope of his/her employment under certain specified circumstances. The Bureau of Land Management has referred this claim to this office for administrative determination.

The administrative record fails to disclose any factual or legal basis to support a finding that the United States is responsible for the death of Kyle Przysiecki while riding his motorcycle at the Imperial Sand Dunes Recreational Area, San Bernardino County. Therefore, this claim must be and is hereby denied.

If you are dissatisfied with this finding, you may resubmit this claim, together with your reasons for reconsideration, to the Regional Solicitor, Pacific Southwest Region, Attn: Donna L. Reynolds, 2800 Cottage Way, Room E-1712, Sacramento, California 95825, within six months from the date of the mailing of this decision, or you may file an action in the United States District Court within that same six months.

Sincerely,

A handwritten signature in black ink, appearing to read "Clementine Berger".

Clementine Berger  
Deputy Regional Solicitor

CC:

Safety Officer, California State Office

9211 7297

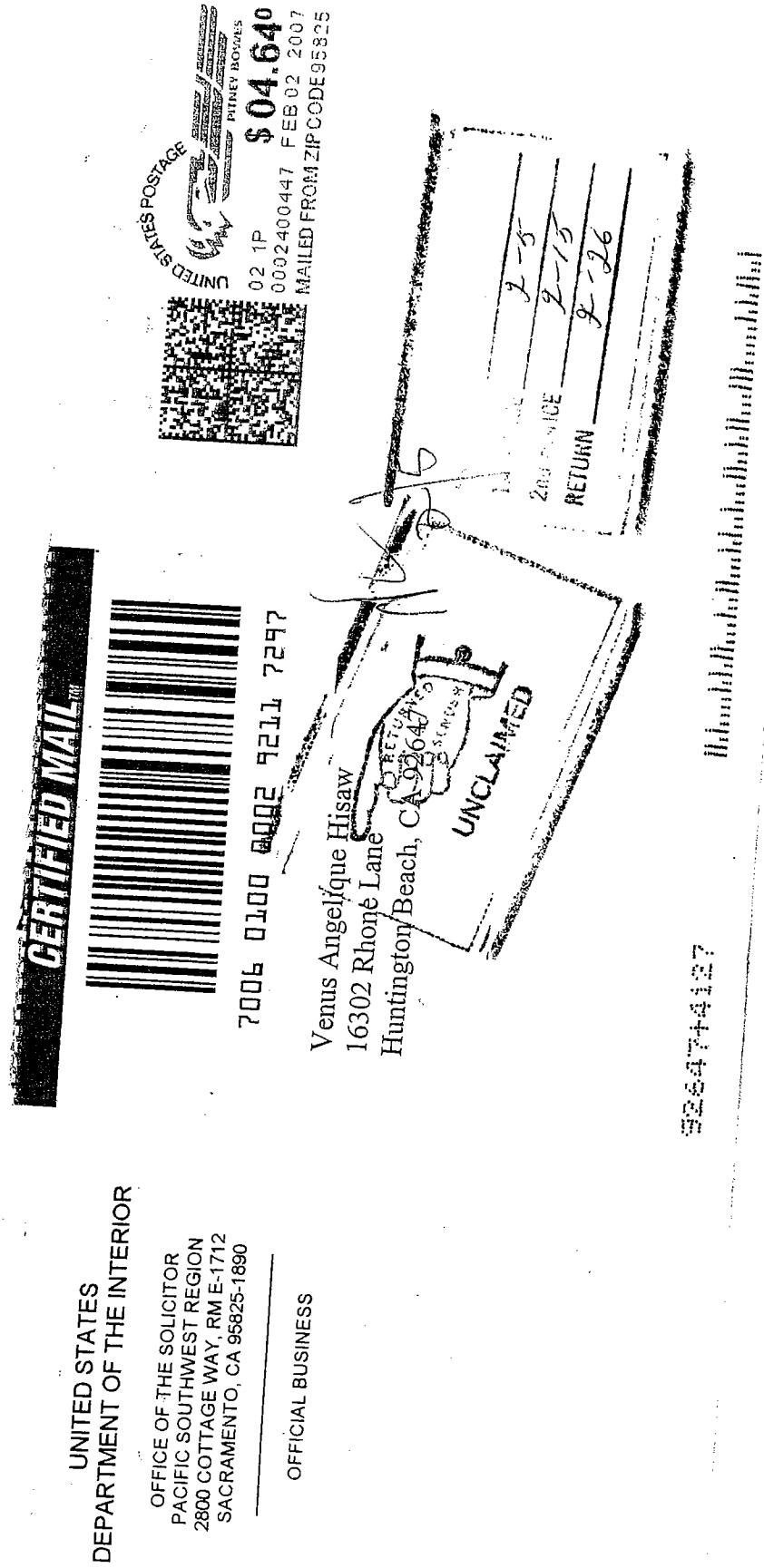
<b>U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)</b>	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a> ®	
<b>OFFICIAL USE</b>	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To	
Street, Apt. No.; or PO Box No.	
City, State, ZIP+4	
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PS Form 3800, June 2002

9211 7303

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PS Form 3800, June 2002



# EXHIBIT

## “3”



## United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

IN REPLY  
REFER TO:

FEB 2 2007

Certified Mail - Return Receipt Requested

Venus Angelique Hisaw  
16302 Rhone Lane  
Huntington Beach, CA 92647

Dear Ms. Hisaw:

You have filed a wrongful death claim on behalf of your son, Kyle Przysiecki (Estate), in the amount of \$25,000,000.00 pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, which provides for settlement of claims for damages caused by the negligent act or omission of a government employee while acting within the scope of his/her employment under certain specified circumstances. The Bureau of Land Management has referred this claim to this office for administrative determination.

The administrative record fails to disclose any factual or legal basis to support a finding that the United States is responsible for the death of Kyle Przysiecki while riding his motorcycle at the Imperial Sand Dunes Recreational Area, San Bernardino County. Therefore, this claim must be and is hereby denied.

If you are dissatisfied with this finding, you may resubmit this claim, together with your reasons for reconsideration, to the Regional Solicitor, Pacific Southwest Region, Attn: Donna L. Reynolds, 2800 Cottage Way, Room E-1712, Sacramento, California 95825, within six months from the date of the mailing of this decision, or you may file an action in the United States District Court within that same six months.

Sincerely,

A handwritten signature in cursive script that appears to read "Clementine Berger".

Clementine Berger  
Deputy Regional Solicitor

*cc: [Signature]*

Resent to attorney:

Michael Avila  
6080 Century Drive  
Los Angeles, CA 90044

cc:

Safety Officer, California State Office

3-2-07

4211 5026

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PS Form 3800, June 2002

See Reverse for Instructions

UNITED STATES  
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR  
PACIFIC SOUTHWEST REGION  
2800 COTTAGE WAY, RM E-1712  
SACRAMENTO, CA 95825-1890



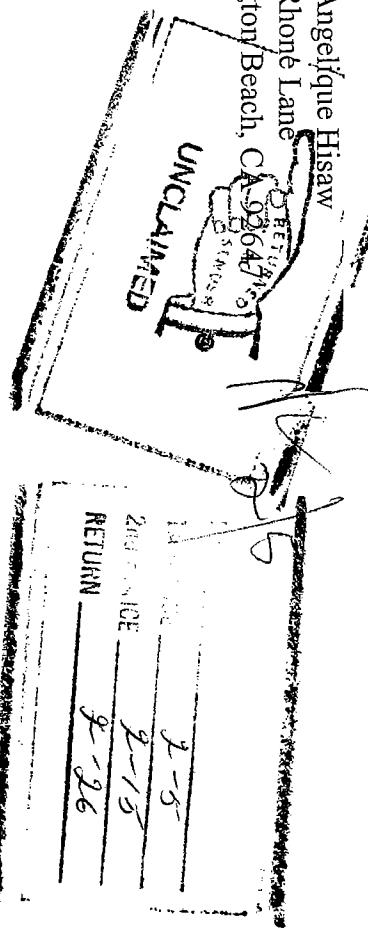
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7006 0100 0002 9211 7297



OFFICIAL BUSINESS

Venus Angelique Hisaw  
16302 Rhone Lane  
Huntington Beach, CA 92649-3518



92647-44127

# EXHIBIT

“4”

AVILA & PEROS, LLP

# ATTORNEYS AT LAW

Michael F. Avila  
Michael V. Peros  
William F. Klausner  
Scott M. Halberstadt  
Sean P. Paden  
John P. Kristensen  
Elaine Hsu  
John T. Lupton

**LOS ANGELES**  
2101 Rosecrans Avenue, Suite 5260  
EL SEGUNDO, CALIFORNIA 90245  
TELEPHONE: (310) 410-8001  
FACSIMILE: (310) 410-8004  
Webpage: [www.ap-lawfirm.com](http://www.ap-lawfirm.com)

**NEWPORT BEACH**  
4100 Newport Place, Suite 550  
NEWPORT BEACH, CALIFORNIA 92660  
TELEPHONE: (949) 838-0260  
FACSIMILE: (949) 838-0261

RECEIVED  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE  
2007 DEC 21 BY S. C. [Signature]  
EL CENTRO FIELD OFFICE  
EL CENTRAL, CALIFORNIA  
White's e-mail address:  
[spk@aplaw.com](mailto:spk@aplaw.com)

December 19, 2007

**VIA U.S. MAIL**

Vicki Wood  
Field Manager  
Bureau of Land Management  
El Centro Field Office  
1661 S. 4th Street  
El Centro, CA 92243

**Re:** Przysiecki v. Eifert, et al.  
Notice of Claim

Dear Ms. Wood:

Please find enclosed Venus Angelique Hisaw's Notices of Claims pursuant to the Federal Tort Claims Act against the Bureau of Land Management.

Should you have any questions or comments relative to the above, please do not hesitate to contact our office.

Very truly yours,

AVILA & PEROS, LLP

*John Blister*

John P. Kristensen

JKP: nep  
Enclosures: As stated

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	<b>FORM APPROVED OMB NO. 1105-0008</b>
1. Submit To Appropriate Federal Agency: Attn: Vicki Wood, Field Manager Bureau of Land Management El Centro Field Office, 1661 S. 4th Street El Centro CA 92243		2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) Venus Angellque Hisaw Michael F. Avila, Avila & Peros, LLP 2101 El Segundo, California 90245	
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 12/20/1964	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT 12/25/2005
7. TIME (A.M. OR P.M.) 1:00 P.M.			
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) Please See Attachment "A"			
9. <b>PROPERTY DAMAGE</b>			
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).			
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side.)			
10. <b>PERSONAL INJURY/WRONGFUL DEATH</b>			
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. Please See Attachments "A" and "C"			
11. <b>WITNESSES</b>			
NAME		ADDRESS (Number, Street, City, State, and Zip Code)	
Please See Attachment "B"		Please See Attachment "B"	
12. (See instructions on reverse.)		AMOUNT OF CLAIM (in dollars)	
12a. PROPERTY DAMAGE N/A	12b. PERSONAL INJURY \$5,000,000.00	12c. WRONGFUL DEATH \$20,000,000.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$25,000,000.00
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM			
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <i>Venus Angellque Hisaw</i>		13b. Phone number of person signing form (310) 410-8001	14. DATE OF SIGNATURE <i>12/18/2007</i>
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS	
The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)		Fine of not more than \$10,000 or Imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)	

## INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance?  Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number.  No

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?  Yes  No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts.)

Not Applicable

19. Do you carry public liability and property damage insurance?  Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code).  No

## INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

## PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. Principal Purpose: The information requested is to be used in evaluating claims.

C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

## PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

**A. NAME AND ADDRESS OF THE CLAIMANTS:**

Venus Angelique Hisaw  
C/O: Michael F. Avila, Esq.  
AVILA & PEROS, LLP  
2101 Rosecrans Avenue, Suite 5260  
El Segundo, CA 90245  
Telephone: (310) 410-8001  
Facsimile: (310) 410-8004

**B. NAME AND ADDRESS OF PERSON TO WHOM CLAIMANT DESIRES NOTICES TO BE SENT:**

Michael F. Avila, Esq.  
AVILA & PEROS, LLP  
2101 Rosecrans Avenue, Suite 5260  
El Segundo, CA 90245  
Telephone: (310) 410-8001  
Facsimile: (310) 410-8004

**C. DATE, PLACE AND OTHER CIRCUMSTANCES GIVING RISE TO THE CLAIM:**

Claimant is Venus Angelique Hisaw, the mother of the deceased Kyle Przysiecki

The following claims arise from the wrongful death of Kyle Przysiecki that occurred on or about Christmas Day December 25, 2005 in an unincorporated area of Imperial County, California 2005 in the Imperial Sand Dunes Recreation Area that is owned and operated by the United States Government's Bureau of Land Management, an agency within the Department of Interior.

Claimant is informed and believes, and thereon alleges that on or about December 25, 2005, the late Kyle Przysiecki was operating a 2003 Honda CRF 450 motorbike with California license number X07V40 (hereinafter "Motorbike") at approximately 1:00 p.m. when the motorbike was struck by a 2004 Buckshot X5 "Sand Rail", with vehicle identification number 122559315 and no state license plate (hereinafter "Sand Rail") that was driven by Shannon Duane Eifert of 17804 120th Avenue, Nunica, Michigan 49448. Kyle Przysiecki was operating the Motorbike on a sand highway when the Sand Rail entered at an excessive speed. Mr. Eifert was unreasonably and unjustifiably operating the Sand Rail at an excessive speed which was a substantial factor causing Kyle Przysiecki to suffer fatal injuries upon the Motorbike being struck by the Sand Rail.

Claimant is informed and believes, and thereon alleges, that the County of Imperial, State of California, State of California Department of Parks and Recreation and California Highway Patrol assumed responsibilities from the United States Bureau of

**EXHIBIT****A**

Land Management's in the operations and management of the Imperial Sand Dunes Recreation Area. Claimants are informed and believe, and thereon allege, that the County of Imperial, State of California, State of California Department of Parks and Recreation, California Highway Patrol and the Bureau of Land Management conscious, malicious and willful disregard in their respective responsibilities were substantial factors contributing to the untimely death of Kyle Przysiecki along with other wrongful acts and omissions.

Claimant is informed and believes, and thereon alleges, that as a direct result of said unlawful conduct on the part of the County of Imperial, State of California, State of California Department of Parks and Recreation, the California Highway Patrol and the Bureau of Land Management Kyle Przysiecki was killed.

**D. CLAIMS FOR DAMAGES/ AMOUNT OF CLAIM:**

1. Causes of Action

a. Violation of Civil Rights: 42 USC 1981, 1983, 1985, 1986, and 1988;

b. Violation of California Civil Code Section 52.1(b);

c. Violation of Rights of Equal Protection United States Constitution;

d. Violation of Rights to Due Process under the United States Constitution;

e. Violation of rights of liberty under the United States Constitution;

f. Violation of Article I, §7 of California Constitution;

g. Assault;

h. Battery;

i. Negligent and Intentional Infliction of Emotional Distress;

j. Negligence;

k. Negligent Hiring and Supervision of Unfit Public Employee;

l. Negligent Hiring and Supervision of Employees;

2. Nature of damages:

**EXHIBIT**  
**A**

- a. economic losses including medical charges, fire department/ ambulance charges, funeral and burial expenses, loss of support/ earnings and property damage;
- b. non-economic damages including pain and suffering, grief and sorrow, emotional distress, loss of moral support, loss of consortium, loss of love, loss of companionship;
- c. punitive damages;
- d. injunctive relief; and
- e. attorneys' fees and costs.

**3. Amount of Damages:**

- a. Claimant's damages are in excess of \$25,000,000.00. (Please See §12 of the accompanying Standard Form 95 Prescribed pursuant to 28 CFR 14.2 and 43 CFR 22.3).

**EXHIBIT**  
**A**

**WITNESSES/PUBLIC EMPLOYEE(S) CAUSING OR WITH KNOWLEDGE  
OF INJURY:**

At this time, claimant believes that the following persons, in addition to the unknown California Highway Patrol Officer(s), Imperial County Sheriff's Department Officer(s) and Employee(s), California Department of Parks and Recreation Officer(s) and Employee(s), United States Bureau of Land Management Officer(s) and Employee(s), would have knowledge regarding the events of this claim and/or participated in the acts and/or omissions which caused the injury(s) to claimants:

<b><u>WITNESSES/PUBLIC EMPLOYEE(S) CAUSING OR WITH KNOWLEDGE OF INJURY:</u></b>	
California Highway Patrol Officer <b>J.D. Cheak</b> Badge Number 16842 California Highway Patrol 2331 Highway 86 Imperial, California 92251	Imperial County Sheriff Harold D. Carter 328 Applestill Road El Centro, California 92243
California Highway Patrol Officer <b>M. Davidson</b> Badge Number 17011 California Highway Patrol 2331 Highway 86 Imperial, California 92251	Imperial County Sheriff's Sergeant Marin Badge Number 848 328 Applestill Road El Centro, California 92243
Imperial County Sheriff's Deputy <b>Kelley</b> Badge Number 588 328 Applestill Road El Centro, California 92243	Gold Cross Paramedic <b>S. Holt</b> 905 S. Imperial Avenue El Centro, California 92243
Unknown Police Officer(s) <b>Brawley Police Department</b> 351 Main Street Brawley, California 92227	Unknown Deputy(s) Imperial County Sheriff's Department 328 Applestill Road El Centro, California 92243
Person Most Knowledgeable California Highway Patrol 2331 Highway 86 Imperial, California 92251	Person Most Knowledgeable Imperial County County Administration Center 940 West Main Street, Suite 209 El Centro, California 92243
Gold Cross Paramedic <b>J. Cerda</b> 905 S. Imperial Avenue	Shannon Duane Eifert 17804 120t Avenue Nunica, Michigan 49448

**EXHIBIT**

<u>WITNESSES/PUBLIC EMPLOYEE(S) CAUSING OR WITH KNOWLEDGE OF INJURY</u>	
El Centro, California 92243	Telephone: (616) 837-7898
Trisha Eifert 17804 120t Avenue Nunica, Michigan 49448 Telephone: (616) 837-7898	Richard Otto Rieck 9360 Evergreen Drive Traverse City, Michigan 49684 Telephone: (231) 275-3430
David Wolfe 1302 Millbury Road Northwood, Ohio 43619 Telephone: (419) 846-7600	Mathew Todd Hove 2210 S. Lewis Street Anaheim, California 92805 Telephone: (714) 939-9878
Person Most Knowledgeable FOX11 KTTV 1999 South Bundy Drive Los Angeles, California 90025	Micheal Przysiecki C/O: Michael F. Avila, Esq. AVILA & PEROS, LLP 6080 Center Drive, Suite 725 Los Angeles, CA 90045 Telephone: (310) 410-8001 Facsimile: (310) 410-8004

EXHIBIT  
**C**

**DEPARTMENT OF PUBLIC HEALTH  
COUNTY OF IMPERIAL  
EL CENTRO, CALIFORNIA**

**CERTIFICATE OF DEATH**

3 2005 13 000823

STATE OF CALIFORNIA  
LAW ENFORCEMENT, FIREARMS, MEDICAL ORGANIZATIONS  
DEATH RECORDS

LOCAL REGISTRATION NUMBER

STATE FILE NUMBER		MIDDLE		LAST (Family)					
1. NAME OF DECEDENT - FIRST (Given)		2. MIDDLE		3. LAST (Family)		PRZYSTECKI			
KYLE		ROBERT							
Also Known As - (Include first, middle, last)				4. DATE OF BIRTH (month/day)		5. AGE Yrs.		6. DECEASED THIS YEAR	
				04/08/1990		15		Month Days Month Days	
7. BIRTH STATE/FOREIGN COUNTRY		8. SOCIAL SECURITY NUMBER		9. EVER IN U.S. ARMED FORCES?		10. MARRITAL STATUS (At Time of Death)		11. DATE OF DEATH (month/day)	
CA		623-42-8473		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNKNOWN		Nev. Mar.		12/25/2005	
12. EDUCATION - HIGH SCHOOL		13. WAS DECEDENT SPANISH SPEECH CAPABLE? (If No, see instructions on back)		14. DECEASED'S RACE - Up to 3 boxes may be checked (see instructions on back)		15. HOURS (24 Hours)		16. DECEASED'S GENDER	
10		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		White		M		F	
17. USUAL OCCUPATION - Type of work for men or if No. DO NOT USE RETIRED		18. INDUSTRY OF BUSINESS OR PROFESSION (e.g., store, bar, construction, employment agency, etc.)		19. YEARS IN OCCUPATION					
Student		Public Education		10					
20. DECEASED'S RESIDENCE (Street and number or location)		21. CITY		22. ZIP CODE		23. YEARS IN COUNTY		24. STATE/FOREIGN COUNTRY	
1723 W. Beverly Dr.		Orange		92868		15		California	
25. REQUIREMENTS TO NAME RELATIONSHIP		26. DECEASED'S MAILING ADDRESS (Street and number or rural route, city or town, state, zip)							
Angel Hisaw-Przydecki - Mother		201 So. Magnolia #43 - Anaheim, CA 92804							
27. NAME OF SURVIVING SPOUSE - FIRST		28. MIDDLE		29. LAST		30. BIRTH STATE		31. BIRTH STATE	
Michael		Red		Przydecki		CA		CA	
32. NAME OF FATHER - FIRST		33. MIDDLE		34. LAST		35. BIRTH STATE		36. BIRTH STATE	
Angel		Ventis		Sam		CA		CA	
37. DISPATCH DATE (month/day)		38. PLACE OF FUNERAL DISPOSITION		39. SIGNATURE OF FUNERAL DIRECTOR		40. LICENSE NUMBER		41. LICENSE NUMBER	
12/30/2005		RES: Michael Przydecki 1723 W. Beverly Dr., Orange, CA 92868		Not Embalmed					
42. TYPE OF DISPOSITION		43. SIGNATURE OF CEMETERY		44. SIGNATURE OF LOCAL RELIGION		45. DATE (month/day)		46. DATE (month/day)	
CR/RES						12/30/2005		12/30/2005	
47. NAME OF FUNERAL ESTABLISHMENT		48. LICENSE NUMBER		49. SIGNATURE OF LOCAL RELIGION		50. SIGNATURE OF CEMETERY		51. DATE (month/day)	
Frye Chapel & Mortuary		FD 512							
52. PLACE OF DEATH		53. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number or location)		54. CITY		55. CITY		56. CITY	
Open Desert		Gecko Rd., GPS: N32.94968 W115.14801		Glamis		Glamis		Glamis	
57. DATE OF DEATH		58. CAUSE OF DEATH (Please describe condition causing death)		59. DEATH CERTIFIED BY (Initials)		60. DEATH REPORTED TO CORONER (Initials)		61. DEATH REPORTED TO POLICE (Initials)	
		Chest and Abdominal Injuries		Secs.		X Yes <input type="checkbox"/> No		X Yes <input type="checkbox"/> No	
62. SEQUENTIAL, 1st certificate, if any, leading to cause of death		63. CAUSE OF DEATH (Initials)		64. DEATH CERTIFIED BY (Initials)		65. DEATH REPORTED TO POLICE (Initials)		66. DEATH REPORTED TO POLICE (Initials)	
on Kyle A. Erie on 12/25/2005		Blunt force trauma		Secs.		X Yes <input type="checkbox"/> No		X Yes <input type="checkbox"/> No	
67. CAUSE OF DEATH (Initials)		68. DEATH CERTIFIED BY (Initials)		69. DEATH REPORTED TO POLICE (Initials)		70. DEATH REPORTED TO POLICE (Initials)		71. DEATH REPORTED TO POLICE (Initials)	
Initials on death certificate		Initials on death certificate		Initials on death certificate		Initials on death certificate		Initials on death certificate	
72. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107		None							
73. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 IN THE PAST YEAR? (Type of operation and date)		74. SIGNATURE AND TITLE OF CERTIFIER		75. LICENSE NUMBER		76. DATE (month/day)		77. DATE (month/day)	
No									
78. CERTIFY THAT IN THE PAST SIX MONTHS YOU HAVE NOT PLACED THE DECEASED IN THE CARES STATED		79. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE		80. DATE (month/day)		81. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE		82. DATE (month/day)	
Attended Hospital				12/30/2005		Michael Mistriel, Deputy Coroner		12/30/2005	
83. PLACE OF DEATH (e.g., home, construction site, railroad track, etc.)		84. DECEASED'S PLACE OF DEATH (e.g., home, construction site, railroad track, etc.)		85. DECEASED'S PLACE OF DEATH (e.g., home, construction site, railroad track, etc.)		86. DECEASED'S PLACE OF DEATH (e.g., home, construction site, railroad track, etc.)		87. DECEASED'S PLACE OF DEATH (e.g., home, construction site, railroad track, etc.)	
Open Desert		Open Desert		Open Desert		Open Desert		Open Desert	
88. DESCRIBE HOW DEATH OCCURRED (Enter which resulted in fatality)		The decedent was driving a motorcycle that was involved in an accident.							
89. LOCATION OF INJURY (Street and number, or location, and city, and zip)		Glamis Dunes, GPS: N32.94968 W115.14801 - Glamis, CA 92248							
90. SIGNATURE OF CORONER / DEPUTY CORONER		91. DATE (month/day)		92. TYPE NAME / TITLE OF CORONER / DEPUTY CORONER		93. FAX AUTHORITY		94. CENSUS TRACT	
		12/30/2005		Michael Mistriel, Deputy Coroner				1-2005411-8*	
STATE REGISTRAR		A	B	C	D	E			

**CERTIFIED COPY OF VITAL RECORDS**

STATE OF CALIFORNIA, COUNTY OF IMPERIAL

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD AS FILED IN THIS OFFICE.

DATE ISSUED: DEC 30 2005

STEPHEN W. MUNDAY, M.D., M.P.H., M.S.  
LOCAL REGISTRAR  
IMPERIAL COUNTY, CALIFORNIA

KAREN P. HEWITT  
United States Attorney  
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United States of America**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

## VENUS ANGELIQUE HISAW.

**Plaintiff.**

v.

UNITED STATES; and DOES 100, inclusive

## Defendants

Case No. 08cv1214-WQH (RBB)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS COMPLAINT  
OR, IN THE ALTERNATIVE, FOR  
SUMMARY JUDGMENT**

DATE: October 14, 2008  
TIME: 11:00 a.m.  
CTRIM: 4

Hon. William Q. Hayes

1

## INTRODUCTION

A prerequisite to filing a lawsuit under the Federal Tort Claims Act (“FTCA”) is the presentation of an administrative claim to the federal agency involved in the tortious activity. If a timely administrative claim is denied in writing, the claimant may file suit within six months of the date the agency sends the claimant its denial letter via certified or registered mail. A suit filed beyond the six-month period is jurisdictionally barred.

In this case, Plaintiff cannot maintain her FTCA claims because she failed to file suit within six months of the date the Department of the Interior, Bureau of Land Management (“BLM”) denied her claim. As demonstrated by the record, Plaintiff presented an administrative claim to the BLM on January 19, 2007. BLM sent via certified mail a written

1 denial of the claim to Plaintiff's address of record on February 2, 2007. Plaintiff did not  
 2 commence an FTCA action within the six-month limitations period following the denial.

3 On December 21, 2007, Plaintiff filed a second administrative claim with BLM based on  
 4 the same incident. This second filing was an apparent attempt to "restart the clock" on the six-  
 5 month limitations period. However, as discussed below, applicable law does not permit  
 6 Plaintiff to resurrect her claims by filing a second administrative claim. Because Plaintiff did  
 7 not file this suit within six months of the denial of her first administrative claim, the Court lacks  
 8 subject matter jurisdiction to hear Plaintiff's FTCA causes of action in this case.

9 Finally, Plaintiff also has alleged a claim under 42 U.S.C. § 1983. However, the United  
 10 States is not a proper party to a Section 1983 claim. Therefore, Plaintiff's Section 1983 claim  
 11 should be dismissed.

12 **II.**

13 **PROCEDURAL HISTORY AND BACKGROUND FACTS**

14 This case arises out of the death of Plaintiff's son, Kyle Przysiecki, in an off-road  
 15 accident which occurred while he was riding his motorbike at the Imperial Sand Dunes  
 16 Recreation Area ("ISDRA"). (Complaint, ¶ 9.) On January 19, 2007, Plaintiff filed an  
 17 administrative claim with BLM alleging negligence with respect to BLM's staffing, maintenance  
 18 and supervision of the ISDRA (hereinafter, "First Administrative Claim"). (Declaration of Donna  
 19 L. Reynolds ("Reynolds Decl."), ¶ 1; First Administrative Claim, Exhibit 1 to Reynolds Decl.)<sup>1/</sup>  
 20 Plaintiff filed the claim in her own name. (*Id.*) Nowhere in the claim is there any reference to  
 21 an attorney representing Plaintiff. (*Id.*)<sup>2/</sup>

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22 \_\_\_\_\_

23       <sup>1/</sup> The date of claim presentation is deemed to be the day the agency receives the  
 24 administrative claim. 28 C.F.R. § 14.2(a) (a formal claim is not filed for purposes of 28 U.S.C.  
 25 § 2401(b) until a federal agency receives written notification of an incident and a claim from  
 the claimant, an authorized agent or representative); see also Bailey v. United States, 642 F.2d  
 344, 346 (9th Cir. 1981); Moya v. United States, 35 F.3d 501, 504 (10th Cir. 1994).

26       <sup>2/</sup> Currently pending before the Court is a related case entitled The Estate of Kyle  
Przysiecki, et al. v. Shannon Duane Eifert, et al., Case No. 07cv0039-WQH (RBB). That case,  
 27 and this action, both involve claims arising out of the death of Plaintiff's son, Kyle Przysiecki.  
 In a Motion to Join as Intervenor filed by Plaintiff in the related case, she stated that a conflict  
 28 of interest prevented Avila & Peros, LLP from representing both her and Michael Przysiecki

(continued...)

In her First Administrative Claim, Plaintiff listed her address as 16302 Rhone Lane, Huntington Beach, CA 92647. (Reynolds Decl., ¶ 2; First Administrative Claim, Exhibit 1 to Reynolds Decl.) On February 2, 2007, BLM sent Plaintiff a letter denying the claim via certified mail. (Reynolds Decl., ¶ 2; February 2, 2007 Denial Letter (see envelope attached to the letter), Exhibit 2 to Reynolds Decl.) The letter was sent to the same address listed in Plaintiff's administrative claim. (Id.)

7 On or about February 26, 2007, the Postal Service returned the denial letter to BLM with  
8 an explanation that the letter had been unclaimed. (Reynolds Decl., ¶ 3; February 2, 2007  
9 Denial Letter (see notations from Postal Service on envelope attached to the letter), Exhibit 2  
10 to Reynolds Decl.) The documentation from the Postal Service appears to indicate that notice  
11 of the letter was left at Plaintiff's residence on February 5 and February 15, 2007 before the  
12 letter was returned to BLM on February 26, 2007. (*Id.*)

13           Although Plaintiff was not represented by an attorney when she filed her First  
14 Administrative Claim, on March 2, 2007 BLM sent a copy of the denial letter to Michael Avila  
15 of the Avila & Peros firm because he was the attorney representing the Estate of Kyle  
16 Przysiecki and might be in contact with Plaintiff. (Reynolds Decl., ¶ 4; Denial Letter with  
17 Notation of Mailing to Attorney, Exhibit 3 to Reynolds Decl.) BLM has no record of any  
18 communications from Mr. Avila in response to the letter. (Reynold Decl., ¶ 4.)

19 On December 21, 2007, BLM received a Second Administrative Claim from Plaintiff  
20 which was presented to BLM by the Avila & Peros firm on Plaintiff's behalf. (Reynolds Decl.,  
21 ¶ 5; Second Administrative Claim, Exhibit 4 to Reynolds Decl.) Plaintiff filed this suit on July 1,  
22 2008. (Complaint, Clerk's Docket No. 1.) BLM did not act on the Second Administrative Claim  
23 prior to the filing of this suit. (Reynolds Decl., ¶ 5.)

25                          <sup>2/</sup>(...continued)  
26 in that action. (See Motion to Join as Intervenor, Case No. 07cv0039, Clerk's Docket No. 46,  
27 pp. 6-7.) Presumably, the conflict was the same reason the Avila & Peros firm did not  
28 represent Plaintiff when she filed her First Administrative Claim. However, the Avila & Peros  
firm did file a Second Administrative Claim on behalf of Plaintiff which BLM received on  
December 21, 2007. (Reynolds Decl., ¶ 5; Second Administrative Claim, Exhibit 4 to Reynolds  
Decl.)

III.

## **PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED**

**A. PLAINTIFF'S FTCA CLAIMS MUST BE DISMISSED DUE TO THE COURT'S LACK OF SUBJECT MATTER JURISDICTION**

The United States, as sovereign, is immune from suit save as it consents to be sued.

United States v. Dalm, 494 U.S. 596, 608 (1990); United States v. Mitchell, 445 U.S. 535, 538 (1980); Quarty v. United States, 170 F.3d 961, 972 (9th Cir. 1999). The right to sue the United States can be acquired only by specific consent of Congress; and the terms of such consent narrowly define a district court's jurisdiction to entertain suit on any given matter. FDIC v. Meyer, 510 U.S. 471, 475 (1994); United States v. Sherwood, 312 U.S. 584, 586-87 (1941).

A jurisdictional prerequisite to suing the United States in tort is the filing of an administrative claim with the appropriate federal agency, as required by 28 U.S.C. § 2675(a). Brady v. United States, 211 F.3d 499, 502 (9th Cir. 2000); Cadwalder v. United States, 45 F.3d 297, 300 (9th Cir. 1995). The administrative claim must be presented to the agency within two years of the claim's accrual. 28 U.S.C. § 2401(b). Once an FTCA claim has been presented, the involved federal agency has six months to act. See 28 U.S.C. § 2675(a). A claimant can file suit under the FTCA only after the agency denies his claim in writing or, in the alternative, after the agency fails to make a final disposition of the claim within six months. Id. If the agency does not act within six months, the claimant may deem the agency's silence to be a final denial. Lehman v. United States, 154 F.3d 1010, 1013 (9th Cir. 1998).

There is a six-month statute of limitations for filing an FTCA lawsuit when an agency denies a claim in writing. 28 U.S.C. § 2401(b); Erlin v. United States, 364 F.3d 1127, 1130 (9th Cir. 2004). Specifically, a claimant must file an FTCA lawsuit within six months “after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.” Parker v. United States, 935 F.2d 176, 177 (9th Cir. 1991). A district court does not have jurisdiction to hear a tort claim against the United States unless the claimant files a complaint in federal court within six months after the final agency decision. Goodman v. United States, 298 F.3d 1048, 1053 (9th Cir. 2002). Administrative exhaustion

1 requirements are jurisdictional and must be interpreted in favor of the United States because  
 2 they involve a waiver of sovereign immunity. Vacek v. United States Postal Service, 447 F.3d  
 3 1248, 1250 (9th Cir. 2006).

4 Here, Plaintiff filed her first administrative claim related to the death of her son on  
 5 January 19, 2007. On February 2, 2007, BLM denied the claim in a letter sent via certified mail  
 6 to Plaintiff's address of record. Plaintiff therefore had six months from the date of denial to file  
 7 her FTCA lawsuit. However, she did not file this case until July 1, 2008, approximately one  
 8 year and five months later. This was well beyond the six-month limitations period.

9 Plaintiff may argue that the six-month limitations period did not begin to run on  
 10 February 2, 2007 because she did not receive actual notice of the denial letter. Instead, the  
 11 letter was returned to BLM as "unclaimed." However, this argument is not consistent with the  
 12 statutory language of Section 2401(b) which does not require actual notice, but instead states  
 13 that an action must be instituted "within six months after **the date of mailing**, by certified or  
 14 registered mail, of notice of final denial of the claim by the agency to which it was presented."  
 15 28 U.S.C. § 2401(b) (emphasis added).

16 The Ninth Circuit also has held that actual notice of an administrative claim's denial is  
 17 not required to start the six-month limitations period for filing suit. In Berti v. V.A. Hospital, 860  
 18 F.2d 338, 340 (9th Cir. 1988), the Veterans Administration sent a letter denying a claim by  
 19 certified mail to a claimant's attorney. The letter was returned and marked "unclaimed." A  
 20 second letter was sent to a new address for the attorney. It also was returned and marked  
 21 "unclaimed." A third letter to the attorney finally was claimed. The plaintiff then filed an FTCA  
 22 action more than six months after the first unclaimed denial letter had been mailed. The  
 23 plaintiff argued that the six-month period began only when actual notice of denial was received,  
 24 not as of the date of the first unclaimed letter. The Ninth Circuit rejected this argument.

25 Section 2401(b) designates the date of the certified mailing as the  
 26 starting point for the six-month statutory period. Berti would have  
 27 this court impose the additional requirement that the mailing result  
 28 in actual notice to the claimant. Yet, in the face of clear statutory  
 language that begins the running of the statutory period from the  
 date of mailing of a certified or registered letter, Berti's request  
 would "enlarge that consent to be sued which the Government,  
 through Congress, has undertaken so carefully to limit."

[Citation.]... Accordingly, we refrain from adopting Berti's proposal, and hold that the date of the initial mailing of a properly certified or registered letter begins the six-month statutory period. Berti's complaint, filed August 21, 1985, was thus untimely as it was filed more than six months after December 7, 1984, the mailing date of the V.A.'s first denial letter.

Berti v. V.A. Hospital, 860 F.2d at 340; see also Claremont Aircraft, Inc. v. United States, 420 F.2d 896, 898 (9th Cir. 1969) (date of certified mailing commences the six-month statutory period).

Consistent with Berti, Plaintiff in this case had to file suit within six months of BLM's February 2, 2007 denial of her claim. If Plaintiff did not receive actual notice of the denial, it was not due to any fault on the part of BLM. The denial letter was sent via certified mail to the address on Plaintiff's administrative claim. If this Court were to impose an actual notice requirement, it would run contrary to the Ninth Circuit's holding in Berti that actual notice is not required. Berti v. V.A. Hospital, 860 F.2d at 340. Furthermore, courts have held that the six-month limitations period, established by Congress, must be strictly observed and exceptions thereto are not to be implied. See, e.g., Claremont Aircraft, Inc. v. United States, 420 F.2d at 898. The period for filing an action is jurisdictional and subject neither to estoppel principles nor to equitable considerations. Burns v. United States, 764 F.2d 722, 724 (9th Cir. 1985).

The fact that the six-month limitations period runs even when the claimant does not have actual notice of the agency's written denial does not prejudice diligent claimants. This is so because the law allows a claimant to file suit if the agency does not act on an administrative claim within six months. 28 U.S.C. § 2675(a). As a consequence, a diligent claimant can file suit after six months pass without a response from the agency whether or not there has been a written denial. Alternatively, the claimant can inquire about the status of the claim if there is no response within six months. In sum, diligent claimants are able to prevent any prejudice to themselves in the event a denial letter does not reach them once six months from the presentation of the claim have passed.

Finally, Plaintiff filed a second administrative claim on December 21, 2007. Plaintiff may argue that even if she waited too long to file suit based on the date her first administrative

1 claim was denied, the second administrative claim allows her to start over with a new  
 2 limitations period. However, this position is not supported by the law.

3 The issue was addressed in Willis v. United States, 719 F.2d 608, 613 (2d Cir. 1983).  
 4 There, several plaintiffs filed administrative claims with the Postal Service but failed to file their  
 5 respective FTCA actions within six months of denial of their claims. Plaintiffs then filed a  
 6 second set of suits and administrative claims. They also requested the district court to deem  
 7 the second set of administrative claims timely and proper. In an opinion authored by Judge  
 8 Friendly, the Court of Appeals rejected the notion that plaintiffs could "start over" after failing  
 9 to file suit within six months of the denial of their initial claims simply by filing additional  
 10 administrative claims.

11 There is equally little force in the contention that plaintiffs could  
 12 escape the consequences of their failure to bring suit within six  
 13 months of the denial of their claims by filing new claims within the  
 14 allowable two year period. If Congress mandated that suit be  
 brought within six months after administrative denial of a claim, as  
 we hold that it did, the bar cannot be avoided by starting all over  
 again.

15 Willis v. United States, 719 F.2d at 613.

16 In this case, Plaintiff failed to file suit within six months of the denial of her first  
 17 administrative claim. Similar to the plaintiffs in Willis, she could not simply start over by filing  
 18 a second administrative claim. Accordingly, Plaintiff's FTCA claims should be dismissed.<sup>3/</sup>

#### 19       **B. PLAINTIFF'S 42 U.S.C. § 1983 CLAIM SHOULD BE DISMISSED**

20 The United States is not a proper party to an action brought under 42 U.S.C. § 1983.  
 21 Hindes v. Federal Deposit Insurance Corporation, 137 F.3d 148, 158-59 (3d Cir. 1998). By its  
 22 plain language, the statute does not authorize redress against the United States. Davis v.  
 23 United States, 439 F.2d 1118, 1119 (8th Cir. 1971). Federal agencies also are immune from  
 24 suit under Section 1983 because Congress has not consented to such suits. See Gerritsen  
 25 v. Consulado General de Mexico, 989 F.2d 340, 343 (9th Cir. 1993). Congress also has not

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 27  
 28       <sup>3/</sup> The FTCA claims alleged in the Complaint are the First Cause of Action  
 (Negligence), the Second Cause of Action (Premises Liability) and the Fourth Cause of Action  
 (Wrongful Death).

1 consented to suit against federal agencies under Bivens.<sup>4/</sup> See FDIC v. Meyer, 510 U.S. 471,  
2 486 (1994). Based on the foregoing authority, Plaintiff's Section 1983 claim should be  
3 dismissed.

4 **IV.**

5 **CONCLUSION**

6 For the foregoing reasons, the Complaint should be dismissed in its entirety.

7  
8 DATED: August 28, 2008

KAREN P. HEWITT  
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9  
10 s/ Ernest Cordero, Jr.

11 ERNEST CORDERO, JR.  
Assistant U.S. Attorney

12 Attorneys for Defendant  
13 United States of America

26 \_\_\_\_\_  
27 <sup>4/</sup> In Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S.  
28 388 (1971), the Supreme Court established an implied private right of action against federal  
officials for tortious deprivations of constitutional rights. Bruns v. National Credit Union  
Administration, 122 F.3d 1251, 1255 (9th Cir. 1997). Bivens is the federal analog to suits  
brought against state officials under 42 U.S.C. § 1983. Hartman v. Moore, 545 U.S. 1130, 126  
S.Ct. 1695, 1700 n. 2 (2006).